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THE INTERNATIONAL
JOURNAL OF ETHICS

OCTOBER, 1914.

A FEUDAL PRINCIPLE IN MODERN LAW.[1]

ROSCOE POUND.

PERHAPS no institution of the modern world shows such vitality and tenacity as our Anglo-American legal tradition which we call the common law. Although it is essentially a mode of judicial and juristic thinking, a mode of treating legal problems rather than a fixed body of definite rules, it succeeds everywhere in molding rules, whatever their origin, into accord with its principles and in maintaining those principles in the face of formidable attempts to overthrow or to supersede them. In the United States, it survives the huge mass of legislation that is annually placed upon our statute books and gives to it form and consistency. Nor is it less effective in competition with law of foreign origin. Louisiana alone of the states carved from the Louisiana purchase preserves the French law. In Texas only a few anomalies in procedure serve to remind us that another system once prevailed in that domain. Only historians know that the custom of Paris once governed in Michigan and Wisconsin. And in Louisiana, not only is the criminal law wholly English, but the fundamental common-law doctrines, supremacy of law, case-law, and contentious procedure have imposed

[1] The introductory lecture of a series of eight lectures upon "The Spirit of the Common Law" delivered before the Lowell Institute, Boston, in February, 1914.

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themselves on a French code and have made great portions of the law Anglo-American in all but name. There are many signs that the common law is imposing itself gradually in like manner upon the French law in Quebec. In everything but terminology it has all but overcome a received Roman law in Scotland. The established Roman-Dutch law in South Africa is slowly giving way before it as the judges more and more reason in a Romanized terminology after the manner of common-law lawyers. In the Philippines and in Porto Rico there are many signs that common-law administration of a Roman code will result in a system Anglo-American in substance if Roman-Spanish in its terms.

Whether it is the innate excellence of our legal system or the innate cocksureness of the people that live under it, so that even as Mr. Podsnap talked to the Frenchman as if he were a deaf child, we assume that our common-law notions are part of the legal order of nature and are innocently unable to understand that any reasonable being can harbor legal conceptions that run counter to them, the Anglo-Saxon refuses to be ruled by any other law. Even more, he succeeds in ruling others thereby. For the strength of the common law is in its treatment of concrete controversies, as the strength of its rival, the modern Roman law, is in its logical development of abstract conceptions. Hence, wherever the administration of justice is mediately or immediately in the hands of common-law judges, their habit of applying to the cause in hand the judicial experience of the past rather than attempting to fit the cause into its exact logical pigeonhole in an abstract system, gradually undermines the competing body of law and makes for a slow but persistent invasion of the common law.

At but one point has our Anglo-American legal tradition met with defeat in its competition with the rival tradition. The contest of French law, English law, and German law, in the framing of the new codes for Japan, was won decisively by the German law. And yet this was not a contest of English with German law. It was a competition

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between systems of legal rules, not between modes of judicial administration of justice. In a comparison of abstract systems, the common law is at its worst. In a test of the actual handling of single controversies, it has always prevailed. Nor is this all. The American development of the common-law doctrine of supremacy of law, in our characteristic institution of judicial power over unconstitutional legislation, is commending itself to peoples who have to administer written federal constitutions. In the reports of South American republics we find judicial discussions of constitutional problems, fortified with citation of American authorities. In the South African reports we find a court composed of Dutch judges, trained in the Roman-Dutch law, holding a legislative act invalid and citing *Marbury* v. *Madison*—the foundation of American constitutional law—along with the modern civilians. The Australian bench and bar, notwithstanding a decision of the judicial committee of the Privy Council in England, are insisting upon the authority of Australian courts to pass upon the constitutionality of state statutes; and the Privy Council has found itself obliged to pronounce invalid a confiscatory statute enacted by a Canadian province. Even in Germany, of which we are prone to think as the land of that administrative government which is so alien to the common-law polity, publicists are now pronouncing it a fundamental defect of their public law that constitutional principles are not protected by an independent court of justice. Moreover, if in the eighteenth century, while the absorption of the law merchant was in progress, Anglo-American law received not a little of the civil law indirectly, through the Continental treatises on commercial law which exercised so wide an influence at that time, in the nineteenth century we were well avenged. In the more recent development of the subject, the commercial law evolved in the English courts has played a leading part, and Continental jurists do not hesitate to admit that in this way a considerable measure of English law has been received into European legal systems. When

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we add that the most significant movement today in the countries that received the Roman law is a change of front from the Byzantine idea of a closed system of rules, authoritatively laid down, which judges may only apply in a mechanical fashion, in the direction of the common-law idea of judicial law-making through the decision of causes, it must be conceded that our Anglo-American system, no less than its older rival, is a law of the world.

Vitality and tenacity are not new qualities in our legal tradition. It has been able to receive and to absorb the most diverse bodies of doctrine and the most divergent bodies of rules, developed outside of itself, without disturbing its essential unity. Equity, the law as to misdemeanors made in the Star Chamber, the law merchant, admiralty, the law as to probate and divorce made in the ecclesiastical courts, and the statutes of the nineteenth-century legislative reform movement in England and the United States, have been, as it were, digested and assimilated. For, although we are wont to say of some of these that they made over the common law, it is quite as true that the common law made them over. In each case their alien characters have steadily disappeared and today they show few points of difference from the institutions and doctrines of pure common-law pedigree by which they are surrounded.

Moreover, the common law has passed triumphantly through more than one crisis in which it seemed that an alien system might supersede it; it has contended with more than one powerful antagonist and has come forth victor. In the twelfth century it strove for jurisdiction with the Church, the strongest force of that time. In the sixteenth century, when the Roman law was sweeping over Europe and superseding the endemic law on every hand, the common law stood firm. Neither the three R's, as Maitland calls them, Renaissance, Reformation, and Reception (*i. e.*, reception of the Roman law), nor the partial reversion to justice without law under the Tudors shook the hold of our legal tradition. In the seventeenth cen-

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tury it contended with the English crown and established its doctrine of the supremacy of law against the Stuart kings. In America, after the Revolution, it prevailed over the prejudice against all things English, which for a time threatened a reception of French law, developed its doctrine of the supremacy of law to its ultimate logical conclusion in the teeth of the strongest political influence of the time, and maintained its doctrine of precedent, involving the unpopular practice of citing English decisions, in spite of the hostility to lawyers and to systematic legal administration of justice characteristic of new communities. It is not too much to say that the common law passed through these several crises with its distinctive fundamental ideas not merely unshaken, but more firmly settled.

Superficially, then, the triumph of the common law and its establishment as a law of the world by the side of the Roman law, seem secure. And yet at the very moment of triumph it is evident that a new crisis is at hand. If not actually upon trial in the United States, the common law is certainly under indictment. If we look only at the three most striking examples of its present world-wide extension,—its doctrine of the supremacy of law, its commercial law, and its law of torts,—its doctrine of supremacy of law and consequent judicial power over unconstitutional legislation is bitterly attacked in the land of its origin, and is endangering the independence and authority of the courts which is the central point of the Anglo-American system; its commercial law is codifying in England and in America; and in its law of torts the sentence of death which hangs over contributory negligence, assumption of risk and the doctrine of liability as a result of fault, so far at least as applied to employees in large industrial enterprises, appears to many of its votaries to involve characteristic principles of the whole system. It is true the world-wide movement for socialization of law, the shifting from the individualist justice of the past century to a newer ideal of justice, as yet none too clearly perceived, is putting a strain upon all law everywhere. In the United

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States, however, there is more than this. Here, beyond this strain which is felt wherever law obtains, the rise of executive justice, the tendency to commit everything to boards and commissions which proceed extrajudicially and are expected to be law unto themselves, the breakdown of our polity of individual initiative in the enforcement of law and substitution of administrative inspection and supervision, and the failure of the popular feeling for justice at all events which the common law postulates, appear to threaten a complete change in our attitude toward legal problems.

Nor is our law well-prepared in all respects to meet the present crisis. The conditions of judicial law-making in the United States are by no means those which are demanded for the best development of the common law in an era of growth. The institution of an elective judiciary, holding for short terms, which prevails in so many of our jurisdictions, has not given us courts adequate to such a task. Indeed, the illiberal decisions of which complaint is made today, have been largely—almost wholly—the work of popularly-elected judges. A system of law-making through judicial empiricism calls for much more in a judge than popularity, honest mediocrity or ignorant zeal for the public welfare can insure. In the period of growth in the fore part of the last century there was a strong, independent bench. That American law grew so rapidly and was fashioned so well up to the Civil War and stood still so steadfastly thereafter, was by no means wholly due to causes of general operation that made for rigidity of law throughout the world in the nineteenth century. It is demonstrable that this change was due in large measure to a change in the character of the bench in our state courts, closely connected with the change in the mode of choice and tenure of judges which swept over the country after 1850. Moreover, the condition of pressure under which causes are passed upon in the American urban communities of today, where crowded calendars preclude the thoroughness in presentation and deliberation in judi-

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cial study which were possible a century ago, prevent judicial law-making from achieving its best. An example from the law reports will make clear what this means. In 9 Cranch, reporting the decisions of the Supreme Court of the United States from February, 1812, to March, 1813, inclusive, decisions in eighty-four cases are reported. In other words seven judges had eighty-four cases before them in fourteen months. In 230 U. S., reporting the decisions of the same court handed down on the one single day, June 16, 1913, decisions in sixty cases are reported. In other words, a hundred years later nine judges had before them for argument between January 10 and April 9 of 1913 and decided on June 16 of that year three-fourths as many cases as the court a hundred years before was required to pass upon in fourteen months. In substance, nine judges have before them in that court today two hundred and eighty cases where seven judges a century ago were called on to hear eighty-four. This does not mean merely that the judges are compelled to work rapidly and with a minimum of deliberation. In order to hear these cases at all the time allowed to counsel must be greatly abridged. Hence where a century ago counsel were heard until every detail had been gone into thoroughly in oral argument, today the court is compelled to restrict argument to an allowance of an hour and a half to counsel upon each side. In state courts the pressure has become even greater. Thus at a time when constructive work of the highest order is demanded, when questions are raising more difficult than any with which American judges had to deal in our classical constructive period—the period from the Revolution to the Civil War—in many of our states the courts are none too well equipped to do the work effectively, and in all of them the pressure of business is such that work of the highest type is all but precluded.

Perceiving the condition rather than the causes of unsatisfactory judicial administration of justice, men are coming forward with all manner of supposed cures. Perhaps the most popular is to tinker the judicial organization,

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carrying still further the tearing down of the Anglo-American judicial office and the subjection of the judge to politics. Another is to supersede the common law by a mass of detailed legislation which aims to leave nothing to the judge. Another goes to the opposite extreme and urges that we abandon all juristic premises and put judicial law-making at large as completely as legislative law-making. The lawyer may not sit by silently when such proposals, flying in the face of all that experience has taught us in the course of legal history, are making head in the community. That they are gaining adherents makes it timely for him to examine the body of legal tradition on which he relies, to ascertain the elements of which it is made up, to learn its spirit, and to perceive how it has come to be what it is, to the end that we may know how and how far we may make use of it in the stage of legal development upon which the world has now entered.

No doubt there are those who will think the lawyer must apologize, or at least must show cause, for all but the last of these inquiries. For it may be conceded that historical jurisprudence, for the moment, is discredited. The fashion of the time calls for a sociological legal history; for a study not merely of how legal doctrines have evolved and developed considered only as jural materials, but of the social causes and social effects of doctrines and of the relations of legal history to social and economic history. I should be the last to deny the great importance of this feature of the program of the sociological jurist. But it is possible to overrate the value of this type of legal history for juristic purposes. Just as a past generation, seeing rightly that there was an intimate connection between law and politics, assumed that the political interpretation of jurisprudence and legal history was the whole story, so another generation, seeing rightly that there is an intimate relation between law and economics, may make the same assumption of all-sufficiency for the economic interpretation of jurisprudence and legal history, and that without much more warrant. For by and large the economic inter-

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pretation of legal history has been sustained by examples drawn from legislation which has failed to leave any permanent mark in the law or by a superficial view of particular juristic or judicial doctrines out of their true juridical setting. In truth two powerful forces have counteracted economic pressure and class interest throughout the history of law, and have prevented the law of peoples that have attained any degree of legal development from being what economic forces or class conflict might else have made it. These are, first, the insistence upon development of law logically from analogies of existing rules and doctrines, both because it was supposed the jurist or the judge could not make law but could only find it and because the demand for certainty and predicability, resting on the social interest in security, was held to require him to deduce according to a known technique from premises already existing, and, second, conscious endeavor to make law express supposed eternal and unchangeable ideals.

Conscious, constructive law-making is a late phenomenon in legal history. In primitive society the idea of sacred law or of settled custom, all departure wherefrom is dangerous, in a later stage the authority of fixed ascertainments of the traditional law, and later still the conception of an eternal and immutable natural law, of which the law of the time and place is but declaratory—all these make against conscious and deliberate creation of law by the free setting up of new premises or by the promulgation of rules which cannot be derived or made to appear derived from existing premises. Even in periods of growth, in which ideals are sought avowedly and attempt is made to shape the law thereto, an identification of these ideals with an ideal development of received legal principles is not unlikely to be the outcome. This tendency to rational working out of the jural materials in the traditional system and the demand for certainty lead jurists and judges to resort to analogy whenever they are confronted with a new problem. They fortify what would be, no doubt, a natural tendency so to proceed in any event. Hence the chiefest factor in

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determining the course which legal development will take with respect to any new situation or new problem is the analogy or analogies that chance to be at hand when those whose function it is to lay down the law are called upon to make an authoritative determination.

Legal history, then, may be made to show us the analogies, the legal premises, which have developed as the potential bases of legal growth. It may be made to show us the ideals which have developed, to which jurists and judges have sought to make law conform by logical use of these analogies and logical drawing out of these premises. It may be made to show the way in which the working out of these analogies and the logical development of these premises have determined both the content and the spirit of the tradition which is the most important part of our law both in bulk and in intrinsic significance. It may be admitted that this is not all we shall need in order to make effort effective in achieving the purposes of law in a new period of growth. But it is a large part and an essential part. For the inquiry will be nothing less than a taking stock of the materials with which we must work, since, in the long run, the condition of law depends upon the condition of the traditional element in the legal system, by which legislative rules are interpreted and developed and into which, if they succeed in establishing themselves as law, enacted rules are absorbed and incorporated.

If we look narrowly at our legal tradition we shall see that it has two characteristics. On the one hand, it is characterized by an extreme individualism. A foreign observer has said that its distinguishing marks are "unlimited valuation of individual liberty and respect for individual property." It is concerned not with social righteousness but with individual rights. It tries questions of the highest social import as mere private controversies between John Doe and Richard Roe. Its respect for the individual makes procedure, civil and criminal, ultra-contentious, and preserves in the modern world the archaic theory of litigation as a fair fight, according to the canons

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of the manly art, with a court to see fair play and prevent interference. Moreover it is so zealous to secure fair play to the individual, that it secures very little fair play to the public. It relies on individual initiative to enforce the law and vindicate the right. It is jealous of all interference with individual freedom of action, physical, mental, or economic. In short, the isolated individual is the center of many of its most significant doctrines. On the other hand, it is characterized by another element tending in quite another direction: a tendency to affix duties and liabilities independently of the will of those bound, to look to relations rather than to legal transactions as the basis of legal consequences, and to impose both liabilities and disabilities upon those standing in certain relation as members of a class rather than upon individuals.

What, then, has determined these characteristics of our legal tradition? How does it come to be so thoroughly, so obstinately individualist in a time that looks more and more to social control for a solution of its problems and its bringing about a socialization of pretty much everything except the common law? How does it come that at the same time this tradition contains another element of an opposite tendency, an element that leads it to deal with men in groups or classes or relations and not as individuals? These questions demand our attention before we assume to pronounce what we may make of our traditional jural materials for the purposes of today and of tomorrow.

Seven factors of the first importance appear to have contributed to shape our American common law. These are: (1) an original substratum of Germanic legal institutions and jural ideas; (2) the feudal law; (3) Puritanism; (4) the contest between the courts and the crown in the seventeenth century; (5) eighteenth-century political ideas; (6) the conditions of pioneer or agricultural communities in America in the first half of the nineteenth century, and (7) the philosophical ideas with respect to justice, law and the state that prevailed in the formative period in which the English common law was made over for us by American

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courts. All but one of these made strongly for individualism, and it is to them that we must trace the intense individualism that has made the classical common-law tradition so out of accord with the present. One of them, however, namely, the feudal law, has given to our legal system a fundamental mode of thought, a mode of dealing with legal situations and with legal problems which gives wholly different results, a mode of thought which has always tempered the individualism of our law, and now that the change from a pioneer, agricultural, rural society to a settled, industrial and commercial and even predominantly urban society calls for a new order of legal ideas, has been the chief resource of the courts in the movement which has long been proceeding quietly beneath the surface in judicial decision. Let us remember that the high water mark of individualism in American law was reached in the last quarter of the nineteenth century. Before that signs of a reaction were appearing, and the common-law tradition proved to have in itself a principle which could be employed to carry forward that reaction without any general disturbance of the legal system.

In considering the foregoing factors in order and in appraising the extent to which and the manner in which they have influenced or fashioned the common law, a few words as to the substratum of Germanic law will suffice.

Speaking broadly, it is true that for all but academic purposes the history of English law begins in the thirteenth century. Yet it is equally true that no arbitrary beginning may be assigned to any institution. In law especially, where until modern times conscious making of much that was new was quite unthinkable, nothing is made at once, as it were, out of whole cloth. There were few anywhere who knew any too much of Roman law when the system that grew up in the courts of the Norman kings had its beginnings, and certainly what was known of it in England was superficial enough. The materials with which the first common-law judges wrought were Germanic materials. The ideas from which and with which they laid the foun-

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dations of the Anglo-American legal system were ideas of Germanic law. So thoroughly did they lay them, so great was the advantage to the law of strong, central courts of justice administering the king's law for the whole realm as the common law thereof, that our law is today more Germanic than the law of Germany itself. The Norman conquest brought a Romance element into our speech. But it brought relatively little that was Roman into the law. When later the Roman law swept over Continental Europe, the traditional law, local, provincial, and conflicting on the Continent, was general, unified, and harmonious in England. In England, therefore, with a vigorous, central judicial system behind it and an established course of teaching in the Inns of Court which gave it the toughness of a taught tradition, the Germanic law persisted. When in the seventeenth century the labors of Coke gave it the form in which we received it in America, the common law was an English development of Germanic legal ideas. Roman law undoubtedly contributed many analogies and many conceptions which were worked into the system. But they were worked over as well as worked in and acquired the character of endemic law. Accordingly because of the attempt at Germanization of the law of the German empire as a result of the Germanist movement in the nineteenth century and the substitution of Germanic doctrines for Roman here and there in the new civil code, our law has in it less of the Roman than the Romanized law of Germany has of the Germanic.

That the substratum of our law is Germanic is something of much more than academic interest. It means that the basis of American law, the material out of which American judges in the nineteenth century made the law under which we live represents the stage of legal development which may be called the stage of the strict law. On the other hand, the basis of the common law of Continental Europe, the Digest of Justinian, made up of extracts from the writings of the classical Roman jurists, represents the later stage of legal development which may be called the

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stage of equity or natural law. Our law also went through that later stage. But in the maturity of our law we still had a double system in which each stage of legal development was represented. In Continental Europe, on the contrary, the materials on which legal development proceeded after the reception of Roman law, had been all but purged of the characteristic features of the stage of the strict law before they were handed down to the modern world. In consequence our judicial tradition, speaking from our classical period, the period in which Coke and his contemporaries summed up and restated the law developed by English courts from the thirteenth to the fifteenth century, in a sense speaks from the stage of the strict law. The continental juristic tradition, speaking from the Byzantine version of the classical Roman jurists, who wrote from the first to the third century and representing, not the strict, archaic *ius ciuile* but the liberal, modern *ius gentium* and *ius naturale*, speaks from the stage of equity or natural law.

Individualism is a prime characteristic of the stage of legal development to which I have referred as the strict law. For example, it insists upon full and exact performance at all events of a duty undertaken in legal form. It makes no allowance for accident and has no mercy for defaulters. When a debtor in the sixteenth century incurred a heavy forfeiture through the sudden rising of a river which he had to pass in order to pay at the time fixed in his bond, the law asked simply whether he undertook to pay at that date and whether he paid accordingly. He took the risk of mischance, and the strict law did not undertake to act as his guardian. Again, the strict law had little use for one who was tricked or coerced into a legal transaction. It might allow him to sue for the wrong done. But it declined to set aside the transaction. If he could not guard his own interests, he must not ask the courts, which were only keeping the peace, to do so for him. When it did regard force and fraud, the law in this stage refused to regard the actual case and ask, Was this man deceived or compelled? Instead it asked, Would the

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standard, normal man have been defrauded or coerced by what was done? In other words, it held that every man of mature age must take care of himself. He need not expect to be saved from himself by legal paternalism or by legal maternalism. If he made a foolish bargain, it conceived he must perform his side like a man, for he had but himself to blame. When he acted, he was held to have acted at his own risk with his eyes open, and he must abide the appointed consequences. He must be a good sport and bear his losses smiling. The stock argument of the strict law for the many harsh rules it enforces is that the situation was produced by the party's own folly and he must abide it. The whole point of view is that of primitive society and recalls the story in Tacitus of how the Germans played dice. They played, he tells us, as a serious business, even staking their own liberty; and if one lost in such a case, he voluntarily went into slavery and patiently allowed himself to be sold. Something of this spirit, which is the spirit of the strict law, may be recognized today in such doctrines as contributory negligence and assumption of risk and the exaggerations of contentious procedure which treat litigation as a game.

Thus our Anglo-American law in its very beginning has in it the individualism of the strict law.

While the strict law insisted that every man should stand upon his own feet and should play the game as a man, without squealing, the principal social and legal institution of the time in which the common law was formative, the feudal relation of lord and man, regarded men in quite another way. Here the question was not what a man had undertaken or what he had done, but what he was. The lord had rights against the tenant and the tenant had rights against the lord. The tenant owed duties of service and homage or fealty to the lord, and the lord owed duties of defense and warranty to the tenant. And these rights existed and these duties were owing simply because the one was lord and the other was tenant. The rights and duties belonged to that relation. Whenever the existence

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of that relation put one in the class of lord or the class of tenant, the rights and duties existed as a legal consequence. The first solvent of individualism in our law and the chief factor in fashioning its system and many of its characteristic doctrines was the analogy of this feudal relation, suggesting the juristic conception of rights, duties, and liabilities arising, not from express undertaking, the terms of any transaction, voluntary wrong-doing, or culpable action, but simply and solely as incidents of a relation.

How important this conception is in the system of the common law may be perceived if we compare the Roman and the Anglo-American way of putting things with respect to some of the everyday institutions of the law. In the Romanist system the chief rôle is played by the conception of a legal transaction, an act intended to create legal results to which the law carrying out the will of the actor gives the intended effect. The central idea in the developed Roman system is to secure and effectuate the will. All things are deduced from or referred to the will of the actor. Arising as the law of the city of Rome when it was a city of patriarchal households, and as a body of rules for keeping the peace among the heads of these households, its problem was to reconcile the conflicting activities of freemen, supreme within their households but meeting and dealing with their equals without. Accordingly, it held them in penalties for such injuries as they did wilfully, and held them in obligations to such duties or performances as they undertook in legal form. It held them *for* what they willed and did willingly and it held them *to* what they willed and undertook legally. In our law, by contrast, the central idea is rather relation. Thus in agency, the civilian thinks of an act, a manifestation of the will, whereby one person confers a power of representation upon another, and of a legal giving effect to the will of him who confers it. Accordingly he talks of the contract of mandate. The common-law lawyer, on the other hand, thinks of the relation of principal and agent and of powers, rights, duties and liabilities, not as willed by the parties but as incident

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to and involved in the relation. He, therefore, speaks of the relation of principal and agent. So in partnership. The Romanist speaks of the contract of *societas*. He develops all his doctrines from the will of the parties who engaged in the legal transaction of forming the partnership, and he treats it, when formed, on the analogy of *communio* or common ownership in case of the *consortium* of co-heirs who keep the patriarchal household undivided after the death of its head. We speak instead of the partnership relation and of the powers and rights and duties which the law attaches to that relation. Again, the Romanist speaks of a letting and hiring of land and of the consequences which are willed by entering into that contract. We speak of the law of landlord and tenant and of the warranties which it implies, the duties it involves and the incidents attached thereto. The Romanist speaks of a *locatio operarum*, a letting of services and of the effects which the parties have willed thereby. We speak of the relation of master and servant and of the duty to furnish safe appliances and the assumption of risk which are imposed upon the respective parties thereto. The Romanist speaks of family law. We speak of the law of domestic relations. The double titles of our digests, such as principal and surety, or vendor and purchaser, where the Romanist would use the one word, suretyship or sale, tell the same story.

The idea of relation and of legal consequences flowing therefrom pervades Anglo-American law on every hand. At law, the original type which provided the analogy still exists in the law of landlord and tenant. If I occupy your land adversely, you may put me out and then have your action on the case for mesne profits; but you have no action against me for that I am enriched unjustly by the use and occupation of your land. The action for use and occupation may only be maintained where a relation exists. But when the relation does exist, a train of legal consequences follow. There is an implied warranty of quiet enjoyment. There is an obligation to pay rent simply

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because of the relation, which the covenants in the lease only liquidate. Covenants in the lease run with the land; that is the incidents so created go with the relation, not with the person who made them. Again, in case of a conveyance for life there is still the relation of tenure, involving duties of the tenant toward those in reversion and remainder. Hence covenants are said to run with the land, that is, to follow the relation. But in case of a conveyance in fee simple there has been no relation since the statute of *Quia Emptores* in the reign of Edward I, and so the burden of covenants in the conveyance does not run. In the United States, when we sought to extend the law as to the creation of legal servitudes by permitting such covenants to run, we did not break over the rule expressly, but our courts instead turned to the word "privity," which in its proper use refers to a relation, and thought the result justified by the conjuring up of a fictitious privity. So also in the law of torts, the existence of some special relation calling for care or involving a duty of care is often decisive of liability. For example if A is drowning and B is sitting upon the bank with a rope and a lifebelt at hand, unless there is some relation between A and B other than that they are both human beings, for all that the law prescribes, B may smoke his cigarette and see A drown. In the absence of a relation that calls for action the duty to be the good Samaritan is moral only. Other systems may reach the result in another way. But here and in other places where it is much less legitimate, the common-law judge tends to seek for some relation between the parties, or, as he is likely to put it, some duty of the one to the other.

Again in the case of mortgagor and mortgagee, we do not ask what the parties agreed, but we apply rules, such as once a mortgage always a mortgage, or such as the rule against clogging the equity of redemption, which defeat intent, in order to enforce the incidents which courts of equity hold involved in the relation. In the case of sale of land, it is not our mode of thought to consider that we

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are carrying out the will of the parties as manifested in their contract. Once the relation of vendor and purchaser is established, we think rather of the rights and duties involved in that relation, of the conversion of the contract right into an equitable ownership and the turning of the legal title of the vendor into a security for money, not because the parties so intended, but because the law, sometimes in the face of stipulations for a forfeiture, gives those effects to their relation. Then too, we have the great category of fiduciary relations, of which trustee and beneficiary is the type. It is true this category and many of the instances above recounted are the work not of common-law courts but of the courts of equity. But the common-law lawyer was at work in the courts of equity. The clerical chancellors brought about an infusion of morals into the legal system. To prevent dishonest or unconscientious conduct, interposing originally perhaps for the welfare of his soul, they forbade the trustee or the fiduciary doing this or that which legally he was at liberty to do. Presently the lawyers came to sit upon the wool sack. They turned at once to their staple analogy, lord and man, landlord and tenant, and out of the pious interference of the chancellors on general grounds of morals they built the category of fiduciary relations with rights and duties annexed to them and involved in them, no matter what the parties to the relation may intend. So completely has this idea taken possession of equity that more than one subject, for example interpleader and bills of peace, is embarrassed by a struggle to find "privity," a struggle to find some relation to which the right to relief may be annexed.

Our public law, too, is built around this same idea of relation. Magna Charta is recognized as the foundation of Anglo-American public law. But Professor Adams has shown that, as a legal document, Magna Charta is a formulation of the duties involved in the jural relation of the king to his tenants in chief. As the Middle Ages confused sovereignty and property, it was easy enough to

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draw an instrument declaring the duties incident to the relation of lord and man which, when the former happened to be king, could be made later to serve as defining the duties owing by the king in the relation of king and subject. Political theory sought to explain the duties of rulers and governments by a Romanist juristic theory of contract, a theory of a contract between sovereign and subjects which was devised originally in the medieval contests between church and state to justify disobedience of the pious subject who resisted a royal contemner of ecclesiastical privileges. We shall see in another connection how in the eighteenth century the two theories merged and the common-law rights of Englishmen, involved in the relation of king and subject, became the natural rights of man deduced from a social compact. Here it suffices to note that the latter is an alien conception in our law. After working no little mischief in our constitutional law in the nineteenth century, this conception of natural rights going back of all constitutions and merely declared thereby is giving way and there are signs that we shall return to the true common-law conception of the rights and duties which the law imposes on or annexes to the relation of ruler and ruled.

Because of its origin in the general application to new problems of the analogy of the reciprocal rights and duties of lord and man, I have ventured to call this element of our legal tradition "feudal law." Perhaps it might be called "Germanic law." For in comparing Roman law and Germanic law, we are struck at once by differences of treatment of the same institution in the two systems, and these differences turn largely upon their respective use of will and of relation as fundamental notions. Compare for instance the Roman *patria potestas*, the power of the head of the household, with the corresponding Germanic institution of the *mundium*. The Roman institution is legally quite one-sided. The *paterfamilias* is legally supreme within the household. He has rights. But whatever duties he may owe are owed without the household,

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not within. On the other hand the Germanic institution is conceived of as a relation of protection and subjection. But the subjection is not because of a right of the housefather. It is a subjection because of the relation and for the purposes of the protection which the relation involves. Also the right of the housefather grows out of the relation and is a right against the world to exercise his duty of protection. Indeed, Tacitus indicates to us this idea of relation as a characteristic Germanic institution. As such, it became the fundamental legal idea in the feudal social organization. In our law, however, the idea is a generalization from the results of judicial working out of one problem after another by the analogy of the institution with which courts were most familiar and had most to do in the formative period of English law, namely, the relation of lord and tenant.

In the nineteenth century the feudal contribution to the common law was in disfavor. Puritanism, the attitude of protecting the individual against government and society which the common-law courts had taken in the contest with the crown, the eighteenth-century theory of the natural rights of the abstract individual man, the insistence of the pioneer upon a minimum of interference with his freedom of action, and the nineteenth-century deduction of law from a metaphysical principle of individual liberty—all these combined to make jurists and lawyers think of individuals rather than of groups or relations, and to make jurists think ill of anything that had the look of the archaic institution of *status*. The Romanist idea of contract became the popular juristic idea and, as Maitland puts it, contract became "the greediest of legal categories." Attempt was made to Romanize more than one department of Anglo-American law by taking for the central idea the Roman doctrine of a legal giving effect to the individual will. This was furthered by the general acceptance in England and the United States of the political interpretation of jurisprudence and of legal history, an interpretation which found the key to social

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and hence to legal progress in a gradual unfolding of the idea of individual liberty in the progress of political institutions. It was furthered also by the famous generalization of Sir Henry Maine that the evolution of law is a progress from *status* to contract. Accepting this doctrine, English writers have charged that the common law is archaic because it refers legal consequences to relations rather than to contracts or to intention. But in truth the dogma of Sir Henry Maine is a generalization from Roman legal history only. It shows the course of evolution of Roman law. On the other hand it has no basis in Anglo-American legal history, and the whole course of English and American law today is belying it, unless indeed, we are progressing backward. Taking no account of legislative limitations upon freedom of contract, in the purely judicial development of our law we have taken the law of insurance practically out of the category of contract, and we have established that the duties of public service companies are not contractual, as the nineteenth century sought to make them, but are instead, as we say, quasi-contractual; they do not flow from agreements which the public servant may make as he chooses, they flow from the calling in which he has engaged and his consequent relation to the public. What is this in each case (and these are relatively recent developments of the law), but the common-law idea of relation, a relation of insurer and insured and of public utility and patron, and of rights, duties and liabilities involved therein? It is significant that progress in our law of public service companies has taken the form of abandonment of nineteenth-century views for doctrines which may be found in the Year Books.

Even more significant is the legislative development whereby duties and liabilities are imposed on the employer in the relation of employer and employee, not because he has so willed, not because he is at fault, but because the nature of the relation is deemed to call for it. Such is the settled tendency of the present. To me it seems a return to the common-law conception of the relation of master

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and servant, with reciprocal rights and duties and with liabilities imposed in view of the exigencies of the relation. These acts have put jurists to much trouble when they have sought to find a place for them in the legal system. Some have said they create a *status* of being a laborer, and this has frightened more than one court. For status is an archaic idea, quite out of line with modern ideas. Hence they have felt bound to inquire what warrant could be found for imposing disabilities upon one whom nature had given a sound mind, disposing judgment and years of discretion. Others have said that the duties and liabilities involved in workmen's compensation acts were quasi-contractual—which means only that the author did not know what to call them or where to place them. What is clear is that they are not contractual and that they are not in accord with the principles of the law of torts. Is this legislation, then, in opposition to our law of torts, so that one or the other must give way? If so, if this legislation may not be made to fit into the system of the common law, it may go hard with it in the judicial working out of its consequences. But I submit that the common law has a place for it and that it is perfectly possible without disturbance of our legal system, to administer these statutes and to give them the sympathetic judicial development which all statutes require in order to be effective. For it is not out of line with the common law to deal with causes where the relation of master and servant exists differently from causes where there is no such relation. It is not out of line to deal with such causes by determining the duties and the liabilities which shall flow from the relation. On the contrary, the nineteenth century was out of line with the common law when it sought to treat the relation of master and servant in any other way. In administering these acts the common law may employ its oldest and most fertile legal conception. Hence we may believe confidently that it will soon assimilate this legislation and develop it into an agency of justice.

It used to be said by way of reproach that the common

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law was feudal. The Roman idea of a legal transaction, which the nineteenth century sought to apply to all possible situations, was regarded as the legal institution of the maturity of law. But the conception of a legal transaction regards individuals only. In the pioneer agricultural societies of nineteenth-century America such a conception sufficed. In the industrial and urban society of today classes and groups and relations must be taken account of no less than individuals. Happily the nineteenth century did not lose for us the contribution of the feudal law to our legal tradition. In its idea of relation, in the characteristic common-law mode of treating legal problems which it derived from the analogy of the incidents of feudal tenure we have a legal institution of capital importance for the law of the future; we have a means of making our received legal tradition a living force for justice in the society of today and of tomorrow, as it was in the society of yesterday.

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NATURE AND REASON IN LAW.

JOHN DEWEY.

IN Pollock's "Expansion of the Common Law," there is found the following interesting passage from St. German, written early in the sixteenth century: "It is not used among them that be learned in the laws of England, to reason what thing is commanded or prohibited by the Law of Nature and what not, but all the reasoning in that behalf is under this manner. As when anything is grounded upon the Law of Nature, they say that Reason will that such a thing be done; and if it be prohibited by the Law of Nature they say it is against Reason, or that Reason will not suffer that to be done."[1] It is a commonplace to the student of the history of law that this identification of natural and rational, and the equating of both with the morally right, has been at various times a source of great improvements in law. Professor Pound has recently designated the stage in the development of law that follows upon and corrects many of the abuses of the stage of strict law as that of equity or natural law. He says: "The capital ideas of the stage of equity or natural law are the identification of law with morals; the conception of duty and the attempt to make moral duties into legal duties, and reliance upon reason rather than upon arbitrary rule to keep down caprice and eliminate the personal element in the administration of justice."[2] Aside from the introduction of equity, the abolition of technicalities which obstructed rather than furthered justice, the adoption by the courts of usages that were more reasonable than those perpetuated in older law, the idea of the subordination of government to social ends, and the furtherance of humane international relations are a few of the many services rendered by the identification

[1] Pollock, "The Expansion of the Common Law," p. 109.
[2] 27 Harvard Law Review, p. 213.

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of the natural with the reasonable. Looking back and taking the intellectual temper and equipment of the times into account, it is hard to see what other intellectual instrumentality could have done the work effected by the concept of natural reason in the seventeenth and eighteenth centuries. In the view of such facts the title given by Pollock to the Law of Nature, "a living embodiment of the collective reason of civilized mankind,"[3] is not so much out of the way as it seems to the philosopher who has been trained to look with suspicion upon any reference to Nature as a norm; and who is conscious of the seemingly individualistic, if not anti-social connotation of the term in political philosophy. But even in Locke, careful analysis shows that the limitation of governmental action to the protection of pre-existent natural rights is much more an assertion of the subordination of governmental action to ends that are reasonable, or moral, than appears from a hasty reading. Restricting the action of government by moral considerations, that is to say considerations of reason, is what Locke is chiefly concerned with.

But, unfortunately, nature and reason are ambiguous terms; hence their use as equivalents of what is morally desirable is subject to diverse interpretations. Nature also means the existent, the given, the antecedent state of things; or the present state of things so far as that is connected with the antecedent condition by casual laws. Appeal to nature may, therefore, signify the reverse of an appeal to what is desirable in the way of consequences; it may denote an attempt to settle what is desirable among consequences by reference to an antecedent and hence fixed and immutable rule.

Accordingly, while at one time or with some people, or with some persons part of the time, natural justice meant that which commends itself to the best judgment of the most experienced or to the collective common sense of the race, as over against the conventional and technical jus-

[3] *Op. cit.*, p. 128.

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tice of inherited legal rules; at other times it meant acceptance of the given state of distribution of advantages and disadvantages. Such a view of natural justice finds, for example, a typical representative in Herbert Spencer. It is, so to speak, purely accidental that such philosophies have been what we lately call individualistic as against collective or socialistic. The essential thing in them is the subordination of the human, whether several or conjoint, to the given, to the physical. The central feature of the *laissez faire* doctrine is that human reason is confined to discovering what antecedently exists, the pre-existent system of advantages and disadvantages, resources and obstacles, and then to conforming action strictly to the given scheme. It is the abnegation of human intelligence save as a bare reporter of things as they are and as a power conforming to them. It is a kind of epistemological realism in politics. That such a doctrine should work out, no matter how personally benevolent its holders, in the direction of *Beati possidentes*, is inevitable.

This mode of interpretation affected the idea of Reason as well as of Nature, not merely because of the historic equating of Reason and Nature in judicial philosophy, but for special reasons. To the century that felt the influence of Newtonian science, Nature was more Reason than human reason itself. Human reason was reason only as a faculty of retracing the wisdom, harmony, the uniform and comprehensive laws, embodied in Nature—that is, in the physically given world. The Lockean and Deistic identification of Reason with God, the benevolent ordainer and arranger of things, flavored even the most free-thinking speculation of the times. Those who prided themselves that they had no fear of God attributed to Nature the same optimistic benevolence that had characterized the God of natural religion. In order to be really reasonable and moral in action, that is, to act in behalf of good consequences, one had but to get his own interfering intelligence out of the way, and permit Nature, true Reason, to execute her own harmonious and benevolent designs. With respect to

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Reason as to Nature, the emphasis upon individualism was extraneous and secondary; the intrinsic and primary thing was the denial of a characteristic, a unique function, to human intelligence. Nature, not human thought, determined the formation of true purposes.

If I trace an analogous movement in the decisions of the courts relative to due diligence and undue negligence, it is not for the sake of demonstrating the influence of this type of philosophy upon the minds of judges; that would be somewhat absurd. But there *is* demonstrable, in my opinion, a parity of logic; and in addition there was probably some indirect influence in so far as this mode of thought was in the air. Reason is appealed to as a standard of action. A man's liability depends upon whether he uses the proper degree of reasonable care and prudence. But what measures this? Obviously ordinary prudence is a vague and relative matter—relative in the sense of varying with the circumstances of the situations, as the courts have pointed out. But this very vagueness and variability make the more necessary some principle for detecting the meaning of reasonable in special cases. It is obvious at a glance that the reference to what reasonable and prudent men do or would do in similar cases, has exactly the ambiguity we have been dealing with. It may mean reasonable in the sense of involving the kind of foresight that *would*, in similar situations, conduce to desirable consequences; or it may mean the amount and kind of foresight that, as a matter of fact, are customary among men in like pursuits, even though it be demonstrable that, upon the whole, the customs involve deplorable consequences.

That this ambiguity is not merely a theoretical possibility is evidenced by the course of court decisions in the matter of the due diligence of employers in the last half century. While, in some cases, the courts have taken the position which identifies reason with foresight of specific consequences, the general tendency for a long time was to identify reasonable prudence with the ruling customs of the trade, no matter how unreasonable those customs themselves

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were when looked at from the standpoint of the sort of consequences they tend to produce. For a long time the Supreme Court was almost alone in saying: "Ordinary care on the part of a railway company implies, as between it and its employees, not simply that degree of diligence which is *customary* among those intrusted with the management of railroad property, but such as having respect to the exigencies of the particular service, *ought* reasonably to be observed . . . such watchfulness, caution, and foresight as, under all the circumstances of the particular service, a corporation controlled by careful, prudent men *ought* to exercise." . . . The court "cannot give their assent to the doctrine that ordinary care in such cases means only the degree of diligence which is customary, or is sanctioned by the general practice and usage which obtains."[4] Such a quotation, on the contrary side, as the following, from a federal court, shows well the different interpretations of reasonable care put upon the obligations of the corporation to the general public it served and to those for whose services it paid: "As respects travel on steam railways many of the courts of this country hold the carrier bound to keep pace with new inventions in the direction of safety. But this rule is an exceptional one, established upon grounds of public policy, and for the safety of human life. It has never been applied to the relation of master and servant."[5]

When we consider the implications of the contract from the side of the employee, as these have been developed through court decisions with respect to the assumption of risks, we find yet another aspect of the same matter. No Kantian philosopher ever went further in ascribing a ready-made antecedent faculty of reason to man than the courts, in endowing the laborers of this country with unbounded foresight of the consequences implied in taking a job; and no transcendentalist ever went further in assuming that this

[4] *Wabash Ry. Co.* v. *McDaniels*, 107 U. S. 454.; italics are mine.
[5] 40 Fed. 784

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antecedently possessed reason was in a position to make itself effective in action. As far as the workmen were concerned the courts were committed to the idealistic assumption: *Mens agitat molem.* In its application, this meant, that risks which the laborer ran as matter of fact in the performance of his habitual duties were assumed to have been deliberately or intentionally undertaken by him. The whole doctrine of the assumption of risk was, in pragmatic effect, a rendering of brute physical situations in terms of purpose or reason.

In short, in substance although not in form, the reasonable or "natural" was identified with the antecedently given, with the state of affairs that customarily obtained, not with the exercise of intelligence to correct defects and to bring about better consequences. From the side of the employer, it meant *Beati possidentes,* To him that hath shall be given; from the side of the employee, *Væ victis,* From him that hath not shall be taken away even that which he seemeth to have.

It would not be difficult to trace the same logic in the denial of the principle of liability without fault. Under certain conditions, the doctrine is doubtless reasonable, in the sense in which reasonable means due foresight of consequences. Under other conditions, where industrial pursuits bring about different consequences, the doctrine that in pure accident of misadventure it is reasonable for the loss to lie where it falls, is, when laid down as a dogma, the deliberate identification of the reasonable with the physically existent, and wilful refusal to use intelligence in such a way as to ameliorate the impact of disadvantages.

Fortunately, many of the specific things dealt with in this paper are now by way of becoming historic reminiscences. But for this very reason they may the better illustrate the main thesis of this paper. The principle of natural law and justice in the sense that technical and official legal rules need to be adapted to secure desirable results in practice, may well be accepted. But we also find that one of the chief offices of the idea of nature in political and

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judicial practice has been to consecrate the existent state of affairs, whatever its distribution of advantages and disadvantages, of benefits and losses; and to idealize, rationalize, moralize, the physically given—for customs from a philosophical point of view are part of the physical state of affairs. By reading between the lines, moreover, we find that the chief working difference between moral philosophies in their application to law is that some of them seek for an antecedent principle by which to decide; while others recommend the consideration of the specific consequences that flow from treating a specific situation this way or that, using the antecedent material and rules as guides of intellectual analysis but not as norms of decision.

My point is practically made. But, in concluding, I will say that I see nothing new in principle in the recent attempt to rehabilitate the principle of natural rights by connecting it with the nature of consciousness.[6] The problem is the same whether we use the older word "reason" or the newer word "consciousness." Is consciousness taken as a possessed fact, something given in some men, and relatively lacking in others? Then we have still a physical morals—a worship of consciousness or intelligence in name; a denial, an abdication of it in fact, since what already exists is taken as the norm of action, in spite of the fact that intelligence is concerned with what the given may lead to. But if by "consciousness" we mean interest in desirable consequences and if we include in its attribution to a person the perception that similar intelligence is desirable in others (a man being stupid or unconscious so far as he does not effectively recognize this fact), then we have a situation where reference to individualism is irrelevant and misleading,[7] and where the significant thing

[6] *Individualism.* Warner Fite. Longmans. 1912.

[7] What would one think of a physiologist who today in describing the digestion of food lugged in the "individual," or the fact that all circulation is "individual" as an enlightening and explanatory fact? To dwell upon a conception of consciousness that identifies it with impartial and comprehensive foresight, and then to insist that "consciousness is individual" in a way that qualifies or denies the natural implications of the prior conceptions, seems to

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is the need of the exercise of intelligence to bring about conditions that will develop more intelligence—a version of natural law to which I heartily subscribe.

I would suggest that the question of the moral right of the employer to exploit (as by means of the doctrine of the assumption of risk) the inferior intelligence of the employee affords an admirable opportunity for removing the ambiguity that still, to my own mind, affects the doctrine of natural rights as developed in chapter four of Fite's "Individualism." The author seems, especially in his criticism of other views, to be falling back upon intelligence as a physical fact, that is, as a given thing. But when he is as anxious to show that his theory is "generous" as another school is to show that its views are "social," he appears to shift to the view that identifies intelligence with effective foresight of impartially and comprehensively distributed consequences. If he means the latter, the difference between it and what other people call a social view of intelligence is verbal; if he means the former, the difference is, pragmatically, fundamental and insurmountable. And, I repeat, while we hear much about intelligence, the effect of any theory that identifies intelligence with the given, instead of with the foresight of better and worse, is denial of the function of intelligence.

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be on a par with the procedure of the physiologist, who, after telling us that circulation is a matter of specific fact, thinks to add or change something by hitching the facts on to an "individual." Either Professor Fite's individual *is* the intelligence over again, or it is something assumed ready-made, never analyzed or described, and yet used to negate the essential traits of intelligence.

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CLASS DISTINCTIONS.

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CLASS differences have expressed themselves in the past in countless ways. Sometimes they have been enforced and made rigid by law and custom assigning to different classes special economic fields or peculiar political privileges. At other times—and this is true, broadly speaking, of our own age—the power of the state and of the church has been used to minimize, as far as possible, the distinctions drawn by society. Where this has been done, the barriers between classes have become fluid, but the fact of class differentiation has nevertheless continued, nor has it, from several important points of view, diminished in practical importance. Nay, sometimes, as for instance in the United States, it would seem as though the attempts of constitution-makers to ignore distinctions of class, only irritate those distinctions the more,—a similar result of a similar cause being yet more clearly evident in regard to the racial distinctions between white men and black. Now the fundamental fact of class distinction is, I believe, this. Members of different classes resent and, in the main, refuse any intimate personal relation with each other; and in particular they abhor intermarriage,—marriage being the most intimate of personal relations. We may, I think, take, generally speaking, the presence or absence of such an aversion from intermarriage, as the criterion whether there is, or is not, a distinction of class between two different sets of people belonging to one race. Of course, there will always be exceptions. Individuals will marry outside their class, for love, or ambition, or money, or for a mixture of these motives; but real class equality can be only asserted of people who intermarry freely without their friends and relations feeling surprise, or doubt, or disgust. Again, the most significant indication of the approaching fusion of two distinct classes is an increase of intermarriage between them.

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But this criterion, though it enables us to decide when and where a class difference really exists, does not take us much further towards understanding the cause of that class difference. We have still to ask, why it is that the members of different classes are repelled by the notion of intimacy with one another and, in particular, why they shrink from intermarriage. On a superficial view it might appear that the root of the difference is economic; it may be urged plausibly, if somewhat cynically, that difference of wealth is the main obstacle to intermarriage, particularly where marriages are arranged by the parents of the principals; it may be shown that it is in general the wealthier members of a lower class who are, by exception, able to marry into the class above them—and so on. I am not concerned to deny what there may be of truth in these opinions, and I shall argue, later, that in a more profound sense differences of wealth are in fact the main determinant of class distinctions. But taking this view on its merits as a *primâ facie* account of what occurs, it seems to me mistaken, and that in two ways. In the first place, it exaggerates the importance attached to wealth as such; and secondly, it ignores the fact that so far as considerations of wealth do enter into the marriage calculus, the tendency to demand some approach to equality of means is based largely on idealistic grounds.

As regards the first point—the importance attached to wealth as such—we must remember that what a class usually demands of one of its members who marries is not that he or she should choose a partner of equal wealth, but that the pair between them should have enough—or prospects of enough—to maintain the class standard of life. Given this sufficiency of means, on one side or the other, it is usual to contemplate with a certain romantic satisfaction the marriage of two persons whose wealth is unequal: one might almost say that the satisfaction is proportioned to the inequality of means—provided that both partners in the match belong undeniably to the class by birth and breeding. Again, on the other hand, we must remember

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that, although the poorer members of a class are now generally forgiven for intermarrying with wealthy inferiors, such matches are tolerated rather than encouraged by the opinion of the class. And, in particular, those whose means introduce them in this way to a superior class are expected within a not too prolonged interval to acquire the manners and prejudices of their new environment. These considerations lead on to the principle asserted above, that in so far as a class demands that every marriage should be based upon a certain minimum of wealth, this demand is rested upon idealistic rather than material considerations. The wealth, in other words, is not wanted merely for itself, but because certain standards of refinement and civilized intercourse cannot be maintained without it. It is, of course, possible that this view is often wrong. It may well be that the minimum is put too high in certain cases. Such mistakes are inevitable in all human calculations, more especially in regard to problems, such as this, which are hardly ever discussed with frankness. But admitting this, I do not think my fundamental assertion can be controverted—namely, that in promoting or encouraging marriages a class will look rather to the maintenance of its cultural standards than to the acquisition of material wealth. We are thus brought back again to the question, why it is that members of different classes shrink from intermarriage, with the conclusion that it is not merely, and probably not mainly, difference of wealth which produces this shrinking. If it be not wealth, it must be differences of tastes and habits—to put it broadly, differences of culture. And by culture I mean the living expression in act and word of ideas and ideals ethical, æsthetic, and intellectual.

Our first question, then, is this: what is the part which economic conditions play in producing social class differentiation? Now the crucial sign of class differentiation is objection to intermarriage; and this objection, we have seen, rests not upon a crude and vulgar valuation of wealth by the wealthier class, but upon the desire to maintain

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standards of culture. Our next enquiry must be, therefore: what are the origins of these differences of culture which mark one class from another? To this question several different answers suggest themselves and I propose that we should examine these answers in turn.

It will be admitted, in the first place, that the culture of any class must be determined either by the ante-natal or by the post-natal history of the mass of its members, or by both; their individual lives are shaped by heredity and by environment, and one or both of these forces must account for that part of their lives which expresses itself in their class culture. Let us begin then by considering whether heredity or environment may be considered the more potent agent in this matter. I suppose there is no opinion so deeply rooted as that which connects the culture of classes with heredity. The very term 'breeding' is an outcome of this opinion, and of its prevalence in our own day we find abundant traces. The stock hero and heroine of melodrama or romance are, and always have been, the boy or girl displaying an unnatural distinction in poor surroundings in the first act, and welcomed home to the ancestral castle or manor house in the last. We are told that a number of ingenious students in London earn considerable incomes by discovering the Norman ancestors of American millionaires. It is easy to laugh at this sentimental pride of birth; but have we, after all, the right merely to laugh at it? Is it certain that there is nothing in it? Is it not, perhaps, the case that recent investigations in biology have reopened this, as so many other social questions? Skepticism as to the part played by heredity in differentiating class culture goes back to the doctrines of natural equality developed during the eighteenth century; and when we turn up the classics of that period we find ourselves face to face with uncompromising statements on the subject which might well make us tremble for the stability of any social science built on such foundations. Take, for instance, the famous passage from the early part of the "Wealth of Nations" where Adam Smith discusses

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the principle which gives occasion to the division of labor. "The difference of natural talents in different men," he writes, "is, in reality, much less than we are aware of; and the very different genius which appears to distinguish men of different professions, when grown up to maturity, is not upon many occasions so much the cause as the effect of the division of labor. The difference between the most dissimilar characters, between a philosopher and a common street porter, for example, seems to arise not so much from nature as from habit, custom, and education. When they came into the world and for the first six or eight years of their existence they were perhaps very much alike, and neither their parents nor playfellows could perceive any remarkable difference. About that age, or soon after, they came to be employed in very different occupations. The difference of talents comes then to be taken notice of, and widens by degrees, till at last the vanity of the philosopher is willing to acknowledge scarce any resemblance." Nor is this a mere chance remark introduced without consideration; on the contrary, when he comes to discuss the national provision for education, the writer's whole thought is dominated by this opinion. Now, I take it, that no competent person could hold such views to-day in the light of recent biological investigation. We have too much evidence of the connection between exceptional ability, or exceptional weakness, and heredity, to doubt that heredity plays a very great part with the mass as well as with the exceptions. There is, however, I think, a danger that society may be led by these developments into an error as serious, theoretically, as that of Adam Smith—and more damaging, practically. We may believe that *because* differences between individuals of the same class are largely due to heredity, *therefore* differences between different classes are also, in the main, due to the same cause. I have spoken of this view as an error, but I would not maintain that it is at present demonstrably either true or false. I think it is probably false in the main, and will proceed to give my reasons for so thinking.

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In the first place, we know that, at least in Western Europe, there is no such thing as purity of class descent. The ancestry of all classes is extraordinarily mixed. Illusions of noble ancestry can be maintained in a few cases, as, for instance, in royal families, by tracing one ascending line through father, grandfather, great-grandfather, with occasional lapses to a female when some great-great-grandfather of previously ignoble family married above him. But this is not playing the game. *All* ancestors are potentially of equal importance with all others of the same grade in producing the individual. A man has two parents, four grandparents, and eight great-grandparents—and, if my arithmetic is correct, more than one million ancestors at the twentieth degree, each of equal importance. The real number, of course, will usually be a good deal less, owing to the intermarriage of nearer ancestors having common forbears further back. When we add to this confusion the further intermixture which results from the constant tendency of individual families to sink or rise in the social scale, we shall, I think, become very skeptical as to the possibility of accounting by heredity for the differences of class culture.

But there are other objections. The first is, that the most striking feature of class culture is its peculiar power of transcending such individual differences as may most plausibly be ascribed to ante-natal causes. In every class you find abnormally wise and abnormally foolish; abnormally strong and abnormally weak; abnormally æsthetic and abnormally unæsthetic; linked together by a community of tastes and habits which somehow constitutes them a class in spite of their differences. We are, all of us, prepared, as the saying goes, to forgive a man anything so long as he is a gentleman, or a woman so long as she is "a really nice girl." It may, however, still be urged that there is some average superiority of class to class attributable to heredity. Individauls in each class might differ widely in hereditary gifts and yet the average of one class be above the average of another. We should remind ourselves that individuals exceptionally

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gifted by birth are constantly rising in the social scale and that the converse is true, so that on the theory most favorable to the lower classes their average endowment by birth should seem to be slightly inferior to that of the upper classes. I have spoken here of superior and inferior, and perhaps this use of terms may be challenged. I have spoken of exceptionally gifted persons rising and of the converse process; it is not, however, clear what is meant by "exceptionally gifted." All that science can tell us on the subject is that those who are most fitted to rise in any environment do rise whilst those least fitted fall; but it may, of course, be the case that society is so ill-constituted as to encourage men who are inferior ethically, intellectually and æsthetically to rise, whilst discouraging or repressing those who are more nobly endowed. And he would be a bold man, indeed, who should assert that society never is so constituted as to work, at least partly, in this way. Are we sure, for instance, that inferiority of the individual, more than inferiority of society, may justly be accused of causing the suicide—if suicide it was—of John Davidson and other notably gifted men in recent years? There is a constant tendency to assume that because leadership is essential (from which it follows that any leadership is better than none) therefore the men, who in any given social system attain to leading positions, must be in the main the men who are most capable of filling them well, in an absolute sense. For myself, I do not take an extreme view on this point. I incline to suppose that the men who attain to leading positions are in the ruck superior to their fellows, but I think, on the other hand, that the measure which society applies is coarse and unintelligent and, in particular, that the ideal man is often passed over for some sentimental or conventional reason entirely disconnected with the function required. I am prepared, therefore, to admit that the hereditary endowment of the upper classes is, generally speaking, somewhat better on the average than that of the lower. But I do not think there is any reason to suppose the difference great, and, indeed, there is

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some reason to suppose it small. The one fact which is known points, I understand, in that direction. At birth the infants of the poor differ, I believe, in no measurable way from the infants of the rich. Of course, the only things that *can* be measured at this stage are physical, whereas the things we are most interested in are mental and moral. But it seems to me at least suggestive, that the physique should be substantially equal at the start and that where, later in life, mental and moral differences become apparent, there we find also great physical differences.

For various reasons then I conclude that ante-natal causes play but a small part in producing the diversities of class culture, and we are, therefore, thrown back for an explanation upon nurture, environment, and education. It will be said, perhaps, that it was hardly worth while to take so much trouble in arriving at this result, seeing that everyone must believe that tastes and habits are largely due to upbringing. We have, all of us, I suppose, seen cases of a man who has raised himself by abnormal abilities to wealth, yet still retains in the main the culture of the class he sprang from; whilst his children, though by no means so gifted as their parent, yet are able, in virtue of their educaton, to mix undetected with 'real' ladies and gentlemen. This is true enough. There is, none the less, a difficulty. The culture of the existing members of any class is, no doubt, determined by their upbringing and education; but by what are these determined? Assuming that class culture is *not* the product of heredity, why does it exist at all? If the whole of a nation be one class by birth, why is it not also one class by culture? The answer which first suggests itself to these questions is, that each class has its traditional tastes and habits, and that the children of the class, and of all entrants to it, are reared in these traditions. This is true, and we shall see later that tradition plays an exceedingly interesting and important part in the genesis of culture. But at our present stage, the answer is unsatisfactory, for we are led on to ask:

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What determines the tradition? And here we are evidently at once in very deep waters; for this seems to require an analysis of the causation of culture itself, whereas hitherto we have been concerned only with the causes of differentiation of culture. Now, the force which first suggests itself for examination in this connection is the force of ideas or ideals, whether ethical, intellectual or æsthetic; it is plain that these come from time to time to individuals; that they modify their tastes and habits and, in process of time, alter standards of culture. To many it will seem *primâ facie* that differences of class culture are due, at bottom, to the fact that each class originates for itself different ideas and ideals in these three fields, ethical, intellectual, and æsthetic. If this be so, we must, at the outset, admit that we are beaten. For no one, I take it, is prepared to state at all positively where these new ideas come from or how they come. These winds blow where they list; we cannot predict or explain them. There is always someone up the sleeve of Fate, but we know no more than Browning knew in what direction he will break out. We may, at this moment, be on the eve of a religious revival that will send us dancing-mad across Europe or on pilgrimages to the far East; we may live to see the wave of democracy break or save the vessel of the state, or lick the feet of a commercial Cæsar or a scientific Solon.

In Vishnu land what Avatar?

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Or, best of all
I love to think
The leaving us was just a feint;
Back here to London did he slink,
And now works on without a wink
Of sleep, and we are on the brink
Of something great in fresco-paint:
Some garret's ceiling, walls and floor,
Up and down and o'er and o'er
He splashes, as none splashed before
Since great Caldara Polidore.

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Or music means this land of ours
Some favour yet, to pity won
By Purcell from his Rosy Bowers—

* * * * *

Oh, Waring, what's to really be?
A clear stage and a crowd to see!

The world has always its Waring.

Yet, after all, what has this to do, at least immediately, with class distinction? For sooner or later these great spiritual forces reach and influence all classes. If one class be more moral, more intellectual, more æsthetic, or differently so, from another, this is a consequence, not a cause, of its class distinction. The class which has leisure will always, at least superficially, show more of the qualities which demand leisure for their development. But this fact, that it shows more of these qualities, will be, I repeat, a consequence, not a cause, of the class distinction. We must then, if we wish to explain the fact of class distinctions, eliminate all forces that can potentially affect all classes. And if we remove all these causes what have we left? If we ignore as trivial, or as, perhaps, non-existent, hereditary differences between the normal members of different classes, we shall find, I believe, only two fundamental differences—the difference of income and the difference of the processes by which income is acquired. I shall call these the income difference and the occupational difference. Of these two causes I consider, for reasons to be examined presently, that the former, the brute difference of income, is by far the more important.

The dependence of culture upon wealth is often denied alike by rich and by poor. The rich like to believe that the superiority they feel is due to their own intrinsic virtue, while the poor either recognize a natural inferiority in themselves or shut their eyes to the superiority of the rich. Yet I think but little consideration should convince us that wealth is, at least, a prime necessity for the development of artistic and intellectual tastes, and that the wealthy

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classes, who have always most developed these tastes, do not owe their wealth to their tastes and cannot, therefore, be supposed on any theory to be better gifted in this respect than the mass of their countrymen. Historically, the great ages of art and literature have seen them dependent upon the fostering care of aristocracies whose members were lifted above the level of bare or merely comfortable subsistence. We no longer allow this truth to be obscured by the fact that some of these aristocracies were democracies owning slaves or having other cities tributary to them. Nor could it well be otherwise, for wealth carries with it three things which are necessary to artistic and intellectual progress: first, it makes leisure possible; secondly, it permits the employment of beautifully precious materials, of architecture in the proper sense of the word, of all the forms and tools of art such as pictures, sculpture and musical instruments which must exist, if at all, for art's sake, and, again, as regards intellect, it provides the libraries and laboratories which are needed for organized study; thirdly, the possession of wealth gives a certain sense of security as to the future which makes it worth while to undertake the preliminary drudgery and exercises which are necessary for the development of the intellectual and moral faculties. The only serious difficulty, I imagine, which might lead us to doubt this assertion of the dependence of culture upon wealth, is the fact that the enormous increase of wealth in our own days has not brought to birth a culture in all respects demonstrably superior to the civilization of the eighteenth century, which it has destroyed. I shall return to this point later.

More doubt will be felt, perhaps, if I propound the somewhat unpopular opinion that, in morals as well as in the æsthetic and intellectual spheres, the rich man is likely, other things equal, to be better than the poor man. If we take extreme cases it is, I think, at once evident that this must be so. The very poor cannot, as a class, have such high ideals or so nearly attain their ideals as those who are rich. Alike their mental, their physical and their nervous

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systems are so overstrained and undeveloped that they can neither see good as clearly nor follow it as consistently as those who are better off. If it be replied that there is at the other extreme of society a class whose moral fibre is equally slackened by excessive expenditure, I shall answer that I know of no such class; such experience as I have of the children of leisure and pleasure has convinced me that their "hearts" are "better" than their heads, and their heads by no means despicable; but if they were worse than I believe they are, it would prove nothing against my thesis, for the defects of this class are due evidently not to the possession of wealth but to the lack of wholesome occupation. I conclude, therefore, that the destruction of the poor is their poverty and that if we find, as everyone who has lived or worked in a slum seems to find, that their virtue is in its way as remarkable as their degradation, we should content ourselves with giving thanks for this moderate satisfaction and not be led by sentimental admiration to deny the evil of what is bad, the inferiority of what is inferior. Some, no doubt, while agreeing that abject poverty must in some measure corrupt morality, will hold that the summits of virtue may be scaled by every man, rich or poor, who starts above the level of bare subsistence. This habit of thought is much encouraged by organized religion, for the obvious reason, that the appeal of the religious teacher to the masses is more likely to succeed if he asserts that each individual among them can triumph over circumstances and become as good as any other individual if only he bends his will to the task. I do not, of course, suggest that this reason is ever present in the mind of the teacher. In the main, men can teach successfully only what they themselves firmly believe. And though I do not, as I have said, agree with the view, I am so far in sympathy with it that I think wealth has much less to do with morality than it has with æsthetic and intellectual culture, if only because society cannot exist at all without morality whilst æsthetic and intellectual progress is comparatively unessential. It is in accordance

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with this that few will dogmatize as to the superior morality of one class as compared with another, while most would admit, I think, a superiority of intellectual and æsthetic culture among the rich.

It is, I think, probable that the way in which the income is obtained also plays a part in determining class standards; yet in discussing this side of the problem we must be on our guard against more than one fallacy. In the first place, the earnings obtained by labor have a curious power of reacting upon the labor itself and making it other than it otherwise would be. We must not content ourselves with ascribing to the effects of manual labor, or machine tending, certain elements in the culture of the working classes which seem to be, and doubtless are, connected therewith. We must always remember that certain kinds of work are only done, certain conditions of labor are only tolerated, because the standards of the working class, as determined in the main by their expenditure, are so low that they do not revolt from them. This is tolerably obvious as regards the length of the day's work and the degree of physical or mental exhaustion which results from it; we have abundant evidence that as the earning power of the working classes increases they demand and obtain shorter hours. And the same is true in many respects of the conditions subject to which they work. The brass ornamentation on a cart-horse's furniture, or on a railway engine, are there because the workers love to have it so. No doubt once there they help to continue the taste which first insisted upon them, but it is not to be supposed that they originated that taste. What is not so generally recognized is that practically all kinds of work have a certain elasticity; processes which do not exercise the mental capacity of the worker can be discarded for processes which do, and so on. One of the clearest signs of this truth is the tendency for countries where the level of wages, *i. e.* the cost of brute labor, is high, to make more rapid advance in the introduction of labor-saving devices of all kinds than is made where the cost of brute labor is low. There is a

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falsehood, probably, embedded in every proverb, but of no proverb is this truer than of the famous necessity for hewers of wood and drawers of water. In point of fact, water is now drawn in civilized countries chiefly by steam pumps and the turning of taps. It must, of course, remain doubtful in what degree the work of the world is capable of being intellectualized, but it may be pointed out that there is no satisfactory evidence that the average man would prefer intellectual to physical labor, given equality of pay and general amenity. Still less self-evident is the view that the intellectualizing of labor really promotes a high standard of culture. One of the main difficulties in the present day is the fact that the class which is rich enough to be cultivated is so exhausted by intellectual labor that it tolerates out of working hours nothing but golf, and bridge, and the music-hall. Another reason for distrusting the occupational factor is the part played by women and children in determining class standards. Here it is evident that the thing which counts is the scale of household expenditure, since the women of all families are, in the main, occupied in the same way—namely with house-work. We should notice especially that in all classes of society the differences between the occupations of the husbands seem to have little power of keeping people apart as compared with the force exerted to draw them together by the common occupation of the wives. The men may sometimes be gravelled for lack of a topic, if they are in divergent walks of life; the women never feel this difficulty.

I thus reach the broad conclusion that difference of income is the main cause of social class distinctions. Each class of the nation, played upon by such ideas and ideals—moral, intellectual, and æsthetic—as exist at the time, tends to embody them in a class culture such as its means permit. Speaking generally, the higher the standard of class expenditure and leisure the more will it incorporate intellectual and æsthetic elements in its culture, and also, I believe, though here I feel less certain, the better socially will it be. I shall proceed shortly, building upon this

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foundation, to consider briefly the part played by tradition and to estimate the effects of economic progress on the development of civilized life. There remains, however, one point in connection with what I have said already, which cannot be omitted.

I have argued that difference of income is the fundamental cause of class distinctions: it may naturally be asked —What then is the cause of difference of income? A full answer to this question is, of course, impossible; but I hope I shall be able, without unduly lengthening this paper, to say something to the point. It is often believed that differences of earnings correspond pretty accurately to differences of ability, natural plus educational, and there seems at first sight to be much to be said for this view, at least as regards modern society. Every man, it is argued, is free to choose his own work, and he will naturally choose that work within his ability which offers the best pay. This leads to a competitive struggle, the upshot of which is that men are graded and paid according to the difficulty of the work which they do. It is not denied, of course, that there are many exceptions and imperfections in the working out of the system. But it is asserted that these are the fundamental facts. Now, I believe that almost everyone who argues in this way implicitly commits the following fallacy. Setting out to account for differences of earning, he first measures the difficulty of different kinds of work by the remuneration of each, and then, naturally, has no difficulty in fitting the difficulty to the remuneration. The origin of this mistake is obvious; we have no means of measuring the relative difficulty of two different kinds of work; we may, indeed, measure their values, or rather the values of marginal increments of each, by watching the price which society offers for each, but our only reason for supposing that these measures correspond to their relative difficulty, is an assumption that as between any two kinds of work there is such a number of men working at each, who could equally well work at the other, as to maintain between them

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a correspondence of pay to difficulty. For such an assumption we have, I need hardly say, no warrant at all. Training and experience make such a difference in each kind of work that it is probably the rarest case in the world for an individual to be equally able to perform two different kinds of work.

It is, indeed, probable, I think, that the earnings of any group, all of whose members had enjoyed approximately equal opportunities, would be found arranged in a normal frequency curve and that this curve would correspond to a curve based on their general ability, as resulting from heredity and education combined, if the difficulties of constructing such a curve could be overcome. Something of this kind has been attempted in regard to the wages of workmen in the manufacturing industries of the United States. But this result helps us very little in regard to the major income differences which generate class distinctions. In regard to these it is, I think, clear that the children of the wealthier classes find access to fields where competition is restricted by the inferior education and opportunities of the inferior classes and where, therefore, their labor has the higher value that springs from limited supply.

"You fall back," it may be retorted, "after all, upon the existence of class distinctions as the cause of class distinctions, since, according to this theory, each class in the social hierarchy maintains its class income by securing privileges for its own members as against entrants from inferior classes." That is certainly my view, but I do not think it involves me in this dilemma. The major differences of income, which act on and are reacted on by class distinctions, spring, I believe, ultimately from three sources. The first is the use which has been made in the past of authority, whether political, ecclesiastical, or brute force, to establish different standards of expenditure in different classes. That I take to be a fundamental factor in human society—a tradition which still makes us accept, without questioning, the collation of authority and wealth. The second is the mere force of accident which, in a society

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founded on speculation, necessarily raises and depresses individuals in immoderate degree. The third is the effect of inherited wealth. What approximation we should get to equality of income, were it possible to remove altogether these disturbing causes, I cannot judge. We should never, of course, have a rigid and precise equality, nor would anyone, I imagine, seriously desire to have it. But I see no reason why we should not reduce the maximum difference of income to limits which are, even to-day, compatible with membership of one social class. Whether, as things are, it is worth while to try, however modestly, to steer society in that direction, as the harbor of five centuries hence, raises problems too difficult to be attacked here.

I pass now to the concluding section of my paper—the investigation of the relations between economic progress and civilization. I have argued earlier that the general presumption is that, other things equal, the more wealth men have the better they will be. This, I take it, is the sole rational justification for our desire of wealth, and yet, if we consult either history or the opinions of great men, we may well doubt whether this presumption is sound. There have usually been men who have thought, and sometimes their thought has dominated the minds of men, that wealth is the root of evil—that asceticism is the only worthy ideal of human life. There have been periods again in the history of the world, the last century is perhaps one of them, when increase of wealth, if it has not gone hand in hand with barbarism, has, at least, not obviously done as much as one could have wished to promote civilization. Now it would, of course, be absurd to attempt to argue a subject of this magnitude. All that I shall do, in my few remaining remarks, will be to state my own view, and to put forward a tentative explanation of why it is that increasing wealth does not necessarily and immediately bear fruit of increasing civilization.

As regards asceticism, it seems safe to say that for the mass of men it is an enormous mistake. I do not deny that individuals may attain by this path to finer emotions

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than are open to them on any other. I stand merely upon what seems to me the self-evident fact, that with the mass of men this is not so. Most of us need wealth if we are to lead the highest, the most truly civilized, life of which we are capable. That, of course, is a mere opinion. I pass, then, to the connection between increase of wealth and improvement of culture. The problem that confronts us may be briefly stated as follows. There seems to be at least this much connection between wealth and culture, that we can say that where culture is there must be wealth, at least in some degree. But we certainly cannot assert the counter proposition: where wealth is, there must culture be. Why is this? The answer generally takes one or other of the two following forms. Either men assert that culture is dependent upon certain spiritual forces, which appear and disappear in the history of a race for reasons which are completely hidden from us. Or the attempt is made to point to particular circumstances, at particular periods, which have been hostile or favorable to the development of culture at those periods. Of these two attitudes towards the problem, the first has the merit of simplicity—it simply shelves the problem as insoluble. The second has the attraction of difficulty, for it must be agreed that the explanations offered are usually hopelessly unconvincing. Usually, indeed, they beg the real question that is at issue. A great offender in this respect was Ruskin. He was never tired of asking his countrymen how they could expect art to flourish in an atmosphere of smoke, in an environment of ugly factories, cottages and villas. The real question at issue, of course, was this. Why was it that the English, having developed a noble art of building both for palaces and cottages, lapsed suddenly into the enormities of the nineteenth century? I would suggest the following answer. I conjecture that where an admirable culture has developed, it has been by the gradual building up of a sound tradition in a class or classes where economic conditions were stable for a considerable period. A class, or a race, needs time, as it were, to extract out of

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any given conditions of existence the best that its general endowment by heredity permits. The thing may be seen on a small scale in the traditional vulgarity of the *nouveau riche*. A man who has been educated to living on a certain scale, and who may have lived at that scale as well as the scale permitted, finds his income suddenly enlarged; the tastes and habits he has acquired do not fit with the new scale and, hence, if he increases his expenditure, it is almost certain to be in an undesirable way; but give a family an enlargement of income continued through several generations and you will find it gradually acquiring by experience the art of living well on the larger scale. Just the same thing is true of the arts of production. If these remain stable for a long period in any country I think you will always find a certain finish and excellence in the products—governed, of course, and limited by the banal hereditary endowment of the race. But alter the methods of production, and a race, which may have carried every branch of production to a high point of artistic merit, will be all at sea. It will not know how to work in the new medium. Its traditional culture will not save it from vulgarity, which may even react on the products of the old methods. This latter tendency may be seen at work very clearly in modern Japan. There is nothing so striking in that country as the contrast between complete mastery in all the traditional arts of production and utter incapacity to apply artistically the new methods they are importing. The exquisite geisha dance and the most barbarous of gramophonic music flourish side by side and are equally applauded.

This brings us to a rather interesting reflection in regard to the great cultures of the past. We, when we speak of culture, mean something that has a conscious element as well an external expression. By taste we mean not merely the gift of producing what is beautiful, but the power of distinguishing what is beautiful from what is ugly. I find myself increasingly skeptical as to the degree in which taste in this latter sense ever existed before the present day. I

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believe that traditions, built up unconsciously, may have led peoples, whose conditions of life were stable, to a fine perfection of detail in manners and art, without really educating them at all in the power of distinguishing good from bad. It is only on this hypothesis that I find it possible to account for the lapses of such countries as Japan or Italy into vulgarity the moment they are confronted with a new problem. Now this idea, if it have anything in it, throws some light upon the phenomena of modern culture. If we start from the position that a certain stability is essential to the development of good standards, whether for a class or for a race, we certainly do find a possible explanation of the state of modern society. We have lived through, during the past century, a general upheaval of economic conditions. Productive power has increased enormously, many productive processes have altered fundamentally and, above all, there has been an enormous increase of fluidity between different classes. As a result we have had an absolute and utter confusion of all standards, and it must be a long time yet before things sort themselves. And, indeed, if my ideas are sound, we can never hope to have in the future a culture developed in the way in which the great cultures of the past have developed. It is improbable that we shall ever again possess either the stability of economic conditions, or the stability of class membership which, in the past, on my view, gave time for traditions of culture to develop by blind evolution. And this is the sound answer, if there be any sound answer, to those who, despairing of the welter which we call civilization, cry out for a return to the old system. We may patch and clout the old bottle here and there; the new wine will burst it again and again.

There are two things to-day which are hostile to culture as they were not hostile in the same degree years ago. The first of these is distinction of classes. In the old days this did not matter much, because each class was sufficiently stable to develop a valuable culture of its own. Now this is impossible. The barriers between classes are broken;

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there is in every class a continuous struggle between the standards of the class itself, the standards of the class above it, the standards of the class below it. Unless you can restore class rigidity, that is, reëstablish the class system on a hereditary basis, you cannot escape from these struggles and the confusion which they generate. I conclude that the main culture of every nation must be vulgar and confused until it has constituted itself into one single class. The second difficulty is, that as productive power and processes now alter rapidly instead of slowly, we cannot rely, as in the past, upon blind evolution to generate culture. If such a thing as national civilization ever again exists it will be based upon a conscious critical insight, a conscious taste. That is impossible, I take it, so long as the existing distinctions of class and income are maintained. It constitutes, I believe, the most serious argument in favor of Socialism—always assuming, of course, that the Socialistic rearrangement of society is genuinely feasible. Unless and until these changes have occurred, culture in its higher form will remain what it has been increasingly during the past century—an affair of cliques and coteries, short-lived, and dominated by a narrow contempt and hostility towards the masses that threaten to engulf them. And the men who might have been great leaders will remain dumb; they will lack their instrument; they will find nowhere the soul of a people, or of a class, whereon to play.

H. O. Meredith.

University of Belfast, Ireland.

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THE ORIGIN OF PUNISHMENT.

ELLSWORTH FARIS.

THE following discussion of the origin of punishment is undertaken with a view of obtaining some light on a difficult subject by means of the genetic method of approach. Our institutions are so complex and our tendency to idealize the existent is so inveterate that we are driven from one theory of punishment to another in the effort to justify what may, perhaps, have no real justification.

It is believed that a clear statement of the origin of punishment will throw some light on the nature of the punishing attitude and in a subsequent article the effort will be made to state the psychological corollary of the view here advanced.

Punishment is nowhere regarded as a specific instinct. It is not a part of the "original nature of man." Its manifestations grow out of the instinct of pugnacity and its accompaniment, the emotion of anger. But even these instinctive reactions are not themselves simple and direct, but are, in their turn, dependent on the thwarting of other instincts and impulses. Fighting and anger are social in their nature, requiring for their arousal, the presence of another animal of the same or related species which enters into some sort of competition or opposition and attempts to check the carrying out of any one of the stronger impulses.[1] Hunger, thirst, the desire for the possession of any object, or the sex instinct, can, most obviously, be the occasion of the arousal of the fighting reaction if a sufficiently serious check is encountered.

But the fighting reaction is not punishment. There is a popular use of the word in which one prize-fighter is said to receive "punishment" from the other, and the "natural punishments" are referred to by Herbert Spencer, but for

[1] MacDougall: "Social Psychology," p. 59.

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such uses of the term there is only a metaphorical justification. Neither combat nor calamity is sufficiently social in character to deserve the designation of punishment.

The common statement is that punishment is derived from this feeling of anger and reaction of fighting in a direct fashion. MacDougall,[2] for example, follows Laing in deriving the whole punitive situation from the "primal law" which is thought of as arising out of a situation within a small tribe of kinsmen in which the patriarch, who wished to have control of the females of the group, drove off the younger males of the tribe as they grew up and forced those who remained to submit to his direction and control. The result of disregarding these directions was, in every case, punishment by the patriarch, who might go to any length until submission was reached. In short, punishment is held to follow directly upon the opposition, by any one, to the operations of the sex instinct.

The same general notion appears in Pollock and Maitland,[3] in which the original situation is described as one in which each member of the group was his own avenger and the position defended that punishment follows directly upon the opposition of any member of the group to the serious purposes and plans of another. Naturally, the place for the origin of the institution of punishment will, accordingly, be found in the tribe. An eye for an eye and a tooth for a tooth is held to be the natural and normal way in which a member of the group answers the action of another in opposing his acts.

The analogy which suggested this theory is, as will be readily seen, the phenomena of struggle for leadership that occurs occasionally among gregarious animals. Rival candidates for the leadership of a herd of elephants have been observed to fight desperately, and the defeated one wanders off to lead a life of comparative solitude as a "rogue." But it is not difficult to see that such an effort

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[2] "Social Psychology," p. 282.

[3] "History of the English Law."

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to banish one member of the group is a very different sort of undertaking from the normal punitive situation. In fact, there is very little resemblance between a duel to the death and any normal procedure of punishment. In punishment there is an endeavor to be fair and just to which the old account does not do justice. There is, even in extreme punishments, a mental measurement of the offence with the penalty and some rough equation results. But in the "primal law" situation, there is only the deadly struggle between infuriated and excited rivals.

I.

There is abundant reason for questioning whether any one inside the primitive group was ever punished, at least by those within his own tribe. In an instinctive way the members of the group are bound together and in the most homogeneous groups they do not punish each other. Present-day people of some uncivilized tribes do not punish their children. The writer, during a residence of several years among the Bantus of the upper Congo river, in which time the people were under constant observation, failed to observe a single case of the punishment of a child. This is not a deliberate or reflective process, but rather an instinctive and uncritical one. The child in a small community that is homogeneous and in a situation where outside influences do not penetrate, will find himself fitting in to the social situation where he grows up and is without the stimulus to commit acts of an anti-social character.

And when, by any chance, such an act is committed, it is highly improbable that it will arouse any resentment whatever; in the event that it does, there is no remedy, and the tribe simply does nothing save where the offence is so serious as to break all bounds. The situation is analogous to that in which one breaks or damages his own property by accident; it is regrettable, but there is no remedy save an imprecation. It is impossible for some people to thrust a knife into their own flesh for, in some way, the weapon refuses to enter. The primitive tribe is a unit in just as

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real a sense. Every member is to be credited with the good deeds of the whole and to be blamed to the faults of any one. Expulsion from the tribe in extreme cases might take place.

The Congo State government in the old days was never at a loss in the effort to apprehend criminals, for while the direct pursuit of a native in the forest would be like trying to overtake an antelope, such a chase is quite unnecessary. The tribe is a unit to such an extent that it is only necessary to send to the village for the chief, whose dignity will not permit him to flee in any ordinary emergency, and to cause the arrest and detention of this chief, if necessary, after which the man who is wanted always comes in voluntarily and surrenders. The only alternative to doing so would be to leave the country entirely; for existence would be unbearable with the head of the tribe in bondage on account of the offending member's failure to give himself up.

The point in this connection is that physical force is not the means of securing this supreme degree of sociality which will lead a man to give himself up to a fate that is desperate in the extreme. The earlier theories on this point are probably erroneous. The typical group control did not depend on force. The fact that the military leader of a war-like people was often, perhaps usually, a man of great strength, has led to the totally unwarranted inference that the rule was to the one who was physically the strongest. The savage is very ready to admire physical strength, but the leadership of one who is physically strong will not depend on this fact entirely or chiefly. He who rules must do so on account of some measure of wisdom in ruling and on account of the support he has from the loyalty of the rest of the group. Achilles is the greatest warrior among the besiegers, but the leadership lies not with him who sulks in his tent or who is indifferent to the death of his own people in unequal strife. Those who have assigned the dominant part in early group control to force, physically understood, have failed to understand that the sneer and

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scorn of those within our own group are infinitely more powerful forces.

An incident personally observed on the Upper Congo river illustrates quite adequately the part played by public opinion in group control. A gigantic young warrior, under the influence of foreign and alien ideas, which were beginning to appear in the community following the European occupation, violated some minor point in the native system of taboos and was quite unrepentant when attention was called to it. The matter came to the attention of the oldest woman of the tribe who set out at once in indignation to find him. He hurried off to his hut, but she followed him to the very door, uttering all the while a stream of indignant protest to which the man vainly attempted to respond, but without opportunity of interrupting the unbroken course of her invective. He went into his hut and she crouched at the door; he retreated into the inner room, but she only raised her voice. The end of the unequal contest was reached when he came to the door, hesitated a moment, and then ran off into the forest, leaving the field to the victor. But the victor was a woman nearly a hundred years old, gray-haired, toothless, shrunken and lean, so frail that a blow from the fist of the warrior would have crushed her skull. She was the incarnation of public opinion and there was more power in her voice than in his muscle. Nor would it be just to say that it was his fear of the consequences which restrained him from resorting to force to rid himself of the troublesome adversary. The fact is that the force of the expressed common will is so strong that it does not occur to the individual to contest it. Obedience is unreflective and almost instinctive. For just as the parental instinct urges the mother to care for her child, so the child's instinct impels him to respond to the mother. And there is no need to explain why the child obeys the mother, the phenomenon requiring explanation being the failure on the part of the child to respond, when this does occur.

It seems clear to the writer that the explanation of the

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tension and friction in modern groups, including family groups, is most easily found in the complexity of the groups in which modern children grow up. An analogy to the primitive simplicity of conduct is to be found in the absence of errors in the speech of primitive children. If a language is pure and has no foreign idioms and if the children are not in the company of those who speak other languages or dialects, then it is probable that they will make no errors in grammar. My own observations confirm this conclusion. During my residence among the Congo tribes no child was ever heard by me to make a mistake in grammar. The influences are all homogeneous, the stimuli are all consistent, and there is no occasion for an erroneous reaction in the matter of the vocal gesture called language. The language is almost perfect in its regularity. The real phenomenon that demands explanation is that a mistake should be made at all, for the normal method of response will be to adopt the conventional words if these are received from a consistent source.

It is confidently believed that a careful report of the facts and conditions among present-day savages would establish the non-existence of the punishment of children among many of them. V. Stefansson says: "We count it as one of the chief triumphs of the four-year expedition of the American Museum of Natural History to the Eskimo that we discovered why it is that children are not punished; for such immaterial things is the money of scientific institutions expended!"[4] He then gives the two previous explanations that have been assigned, namely, that the children are so good that they do not need it, and secondly, that the Eskimos are so fond of their children that they cannot bear to punish them. Both of these explanations are rejected in favor of the theory that the belief of the natives that every child is the reincarnation of the spirit of an honored ancestor is the real explanation of the forbearance of the parents under circumstances which the white man often found very

[4] V. Stefansson, "My Life with the Eskimo," p. 395.

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trying. Whether this explanation points out the real cause of the phenomenon or whether it was a theoretical formulation which grew up to account for the practice and to justify it, is not important for this discussion. The main thing to observe is that there is no punishment of children among these people. With the coming of the white man, the group will be more and more subject to outside influences and there will be increasing opportunities for tension; but during the ages when they were living their own life, there was no thought of punishing the children.

Stefansson also deals at length with the subject of the immense power of public opinion in the Eskimo society. Resort to force is so rare as to be almost negligible. They are a unit, rule is not by force, though there is always a leader. The authority of the leader depends, however, not on his strength, but on the extent of his influence with the larger group.[5]

Absence of punishment is also the characteristic of the Japanese system of governing children. President Sato of Sapporo College in a conversation with the writer, says that the Japanese do not punish their children even yet, although the foreign influences are very pronounced at the present time in Japan. But for a long time, the system was homogeneous and unified and the momentum of it endures till the present. It is true that President Sato considers that the Japanese are too indulgent with their children and that they should exercise more careful control over them, but the fact of the absence of a system of physical punishments for children is highly significant.

The solidarity of the truly primitive group in this respect can, therefore, hardly be overstated. There is no remedy for an infraction of custom by a member of a group. No physical force is used or can be used. The whole of the remedy is vocal disapproval, reproach, and scorn. But for reasons that will later appear in this discussion, it is contended that scorn and ridicule are the most powerful

[5] *Op. cit.*, p. 365.

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weapons that are available in the service of conformity.[6]

This much is, therefore, clear from the discussion so far. Punishment could not have arisen within the early group owing to the absolutely social character of their early organization and the absence of physical force from their methods of dealing with each other. It is recognized that offences might occur and did sometimes occur which would be so serious as to dissolve the bonds entirely, but as will be seen, such a situation was met by a mode of reaction that is not properly called punishment.

How, then, did punishment arise? If it did not begin inside the group in some sort of formal infliction of penalty or violence of force, did it originate in the reactions against the enemies of the tribe? This question will now be considered.

II.

The really primitive group, we have seen, was probably bound together by ties of an instinctive nature which made it impossible to proceed in any way against one of the number for an offence that should work injury to the offender. The opposing theory finds the origin of punishment in the wars with the enemies of the tribes. Westermarck thinks that the instinct of resentment, in most cases "sympathetic resentment," but always some strong emotional state of mind, is the key to the understanding of the punishing reactions. Hobhouse finds a cognitive basis for the origin of punishment in the concepts that are formed when the evil effect of the offence is observed. Steimmetz traces it to the expansion of personality that follows the retaliation against an affront.

But it seems quite unnecessary to go beyond the simple, inherited reaction of all gregarious animals of the carnivorous type, all females with young, and even insects of

[6] The Roman Assembly of the Tribes could not inflict death, only a fine, for the life of a Roman was sacred inside the walls. (Maine: Anc. Law: 375) *But the military court could inflict the death penalty.*

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the social kind, as bees and wasps. There is a natural, inherited reaction, of defence against the attack of a stranger or an enemy. The savage fights anyone from the outside who has attacked his child or his brother or his father or any of his kindred or clan, and does so just as a hive of bees or a nest of hornets responds to a disturbance of a hostile nature. The reaction is not due to reflection, does not arise out of concepts of justice or right or property, and is not due to any antecedent feeling. The beginning of the whole process is this reaction of a protective character absolutely essential to the preservation of the group, which takes into account only the dangerous character of the enemy and the need of securing his annihilation.

The fixed character of the primitive group is one of its most striking characteristics. In general, it is almost true that the only way to become a member of the group is to arrange to be born into it. There is, to be sure, a natural tendency toward the enlargement of the social group, but for the primitive man, even the nature peoples of the present day, it is often true that the whole world is divided into just two classes, namely: kin who cannot become enemies, and enemies who can never become kin. The former are never liable to punishment for reasons shown, and the latter are equally exempt from *punishment* because they are the object of *attack in war*.

The attack on an enemy or a stranger who offends is often made when the dictates of prudence or self-interest would make another course of action desirable, but the tribe is without any other alternative. Just as a rattlesnake exhausts his venom in futile strikes and is captured with impunity, so many a native tribe would have been able to maintain itself and get ahead, if it had been able to take a cool and rational attitude toward attacks, but this is not possible. The attack is made because there is nothing else to do.

Just what punishment is will presently appear, but it is evident that an attack which ceases only with the annihilation of the enemy, which is without any relation to the

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nature or gravity of the offence committed, and which is directed towards those who are thought of in the most abstract way as enemies, is not yet the sort of reaction that we call punishment. It may be called a war, a feud, a vendetta, or a foray, but the disregard of consequences, the lack of measure or restraint, the wholly impersonal relation that is assumed, marks the phenomenon off from true punishment.

The literature of feuds and the vicarious infliction of suffering on the innocent members of the group is very complete, but the following personally observed circumstance will bring out the facts that it is desired to emphasize in this connection. A native woman of the Upper Congo secured the remission of the payment of dowry and returned in a perfectly regular and legal manner to her father, but passed with unseemly haste to the home of the co-respondent. The deserted husband, in a fit of jealousy, came from his distant village with a party, and proceeded in the darkness to fire the hut in which the couple was sleeping, but, as it was afterwards explained, included some near-by huts because the huts of the enemy were not very well built. The next morning saw a counter foray into the villages of the house-burners, but this attack was directed against a remote portion of the enemy's village in order that they might be taken by surprise as the news of the affair had not spread. Accordingly, an approach was made and a volley fired at close range, killing a man and a woman who did not know that there was any trouble between the two communities. After this, slaughter went on merrily for several months.

Now, it is significant for this discussion to note that the group has no censure for those who are the occasion for trouble of this kind. The woman whose action caused the death of several of her tribe is not reproached, even by those who are the heaviest losers in the fighting. The actions of the quarrelsome members of the tribe, in so far as they affect outsiders, are accepted unquestionably and the whole tribe joins in the natural, normal, and often

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joyously exciting reaction called out by the instinct of pugnacity. Nor is there any blame for the enemy. He is conceived as doing his part. He is not supposed to take into account the interest of a group other than his own; he is thought of in the most abstract fashion as a target and source of danger, game and hunter in one, and with nothing even resembling a fellow-feeling.

There was a little Congo lad who owned a chicken which one day appeared with only one leg because the boy felt obliged to practice economy by eating one leg and letting the rest of the fowl wait! This killing on the installment plan is hardly to be thought of as cruelty, but is due to the fact that the fowl is viewed from the point of view of food alone. The lad would as soon have thought of showing mercy to a potato or a mango, as to a chicken; for mercy and consideration belong to the members of your own family and are unthinkable in any other situation. The cannibal tribes, which are not the lowest but represent the highest development among the peoples of the Congo valley, often stick the living victim full of bambo skewers to preempt portions of the meat before the slaughter!

A social attitude toward a member of another group is, therefore, unthinkable. A snake, a leopard, a slaughtered sheep, or a crushed worm is not more abstractly treated. It is felt that an attitude of this sort cannot by any stretch of meaning be taken to include punishment.

The conclusion is, therefore, that there is no punishment of any one in a thoroughly primitive society. The whole universe is divided into two classes for the theoretically primitive savage, and these are the members of his own group whom he does not ever think of striking or punishing in any way, and the rest of the world who are to be watched carefully at all times but who are to be destroyed if they are found in an attitude of attack.

A thoroughly analogous situation is found in the attitude of civilized nations in their international relationships. The citizens of a foreign country, so long as they remain on their own territory, are not subject to punishment by

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any other nation whose citizens may have suffered injury. If an expedition is made across the border and damage is done the goods and persons of another nation, there is no punishment by the nation that receives the injury. Any attempt at redress by a foreign nation inside our territory is war. There are only two courses open to an offended people in such a case. They can send an attacking force across the border to avenge the wrong, but this is not punishment, it is war. The only other course open to the injured government is to appeal in a friendly way for the government of the offenders to take cognizance of the offence and do justice. But clearly here the injured nation is not punishing anyone. They may appeal to another to punish, but this appeal is a friendly and social act. Punishment must, therefore, be administered by the group to which the offender belongs. But we have seen that when the group is homogeneous, it is impossible for the category of punishment to have any place. There are groups organized within civilized society which are so thoroughly social that there is no thought of punishment within the circle, as for example, a college faculty or a social club.

III.

For a situation which would make the attitude of formal punishment possible, we must have a society that has grown so complex that there are varying degrees of relationship and of fellow-feeling. This is, to be sure, the natural result of a prosperous community for, as populations multiply and migrations are rendered necessary by part of the company in order to find more room, it is inevitable that some distant tribes should also be distant kin and the reaction of enmity would tend to become modified. Indignation would be present, but it would be tempered by other feelings, in case an offence should be committed. The presence of slavery as an institution is also one of the early manifestations of complexity. Exogamous marriages also imply alliances with otherwise hostile tribes and these

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alliances are often of the most serious and binding nature. Also there are numerous temporary alliances for barter and for protection.

In such a complex situation it would be a rare case in which an offender would not have some friends within the very group that is concerned. Should two slaves, for example, have a serious quarrel, there might be nothing in the way of a battle to the death if they were of different tribes. But the owner of the two would naturally wish to save his property. In case of a federation of villages, the leaders would naturally be in favor of an amicable settlement of feuds between constituent members of the larger organization. There will be those in such a complex group who would wish to see the offender destroyed, that is, they would take the part of an enemy. There would also be those who would wish to have him escape entirely and who would, therefore, defend his cause. And there is necessary in any real punitive situation an impartial umpire who has interests on both sides.

Here, then, is the solution to the problem of the origin of punishment. So long as there are just two groups in the social world of the savage, no punishment could take place, but when there are three or more groups in his world, the attitude of formal punishment becomes a natural one. There is the group to which the offender belongs, the group which he has attacked, and a third which is relatively neutral and has interests in both.

Our institutions of punitive justice exhibit this phenomenon quite accurately. The criminal is the expression of a group and is normally quite loyal to the group ideals and the code of his clan. This group is represented before the bar by counsel, appointed, if necessary, by the state itself, and the counsel for the defence is interested in making such a showing in the trial of the cause that the rights of the defendant will be fully protected.

There is also the group which the prisoner has attacked, represented by the prosecuting attorney whose sole task it is to paint the offence in the blackest colors, or, in other

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words, to represent his enemies and to destroy him, if possible. The fact that he is said in our legal procedure to represent the "people" should not blind us to the fact that there is also a third group necessary in the situation, represented by the judge and the jury. These stand for the great body of those who are not directly concerned and who are, in reality, attempting to arrange the conflicting claims. The jury is supposed to have no interest in the case and preferably to have no knowledge of the matter, to be, therefore, wholly disinterested and of another social group entirely.

According to this discussion, punishment is a practice that has arisen out of group activity and owes none of its origin to private vengeance or the rule of force within the group. Punishment is the expression of the clashing of groups; with a "buffer-group" to lessen the shock. It is a phenomenon of social psychology and can only be approached intelligently from the social point of view.

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EMERSON THE NIHILIST.

CHARLES GRAY SHAW.

EMERSON tells us that he was wont to dip his pen into the blackest ink without fear of falling into the ink-pot. After nearly a century of Emerson, we are ready to read his message, whose dark character is best expressed after the manner of idealistic nihilism. Endowed with a pure soul, which saved him from personal contumely, and equipped with a superb style, which usually tempered and veiled his severe philosophy, Emerson did not hesitate to elaborate ideals which, at a later period, were to characterize such disturbed and maligned souls as Baudelaire and Wagner, Stirner and Ibsen. In spite of the purity of his soul and the serenity of his art, Emerson did not shrink from the anarchistic, the immoralistic, the irreligious; such were the different hues which darted from the star of individualism as it shone upon his head. To-day, when warm social winds are fanning all minds, this cold current of the anti-social cannot fail to be wholesome and stimulating; into the close atmosphere of such social thinking, Emerson's *Essays* rush in like a draft; to enjoy the refreshing influence, we must run the risk of taking cold. We Americans have our Emerson; why, then, should we dote on Nietzsche? Nietzsche's hardness, his coldness, his acidiferous ethics were anticipated by Emerson, whose *Essays* of 1841 may be considered the beginning of downright egoism in the world.

"Blessed be nothing!" This text of Transcendentalism was the fundamental tone of Emerson's music, the music of the future; "the worse things are, the better they are;" or, as Nietzsche expressed it, "Things must grow better, that is, worse." Emerson pretended to settle nothing; an endless seeker, an experimenter with no past at his back, he would unsettle everything. True and false, good and bad, sacred and profane were to him but so many

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artificial distinctions of no authority to the healthy, happy ego; the only fact whose authenticity could not be questioned was the fact of selfhood; 'I am' is categorical; all else, truth, goodness, holiness, and the like, is purely hypothetical.

When and where did it begin, this nihilistic habit of insisting upon the 'I am' and the 'I think?' With Eve in Eden, with Prometheus? The world has always had some place for the ego, but the ego as something self-conscious and self-willed was the product of the nineteenth century; before that time, the 'self' merely occurred; after Robespierre, Kant, and Goethe, the self came into being as "the one who wills himself." Yet, criticism must not overlook that hardness of the seventeenth century which, usually devoted to the rigid affirmation of orthodoxy, made room for the humanism and Satanism of Milton. When Milton's Satan learned that "to be weak is to be miserable," when he taught himself to say, "evil, be thou my good," the ethics of the strong had begun; and with it "the transvaluation of all values." So the eighteenth century, with its yes-and-no skepticism, did not fail to repudiate its own rationalizing moralism when Blake wrote his *Prophetic Books;* with Blake's *Jerusalem* before us, we have no especial need of Nietzsche's *Zarathustra;* indeed, Blake's *Voice of the Devil* and *Proverbs of Hell* make all Nietzschean utterances seem quite proper. Blake, Emerson, and Nietzsche agreed that the good is the strong, the bad the weak; in such ethical dynamism lies their only justification; we of the age of social weakness need this tonic, this iron in our anæmic veins. Our Poe has opened the strong sources of irrationalism; our Emerson has made immoralism possible, credible. As we revolve about these foci of our American culture, we must prepare to enlarge the ellipse, to enrich the content of our spiritual life; we must prepare for a higher synthesis than current scientism and sociality now afford us.

Emerson was not unaware of the strong humanism which Milton had instilled into the character of his Adam;

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the stronger Satanism of *Paradise Lost's* hero, however, seems to have escaped his notice; in like manner, Emerson knew of Blake, but it was Blake's mysticism, not his unique moralism, which made its appeal to him. Now, Emerson had Aryan "blue-eyedness," as Nietzsche calls it; indeed, where do we find bluer eyes, where a deeper, brighter blue-eyedness? The intimate history of nineteenth-century individualism is Emersonian in its whole alphabet, from alpha to omega. The "so-called nineteenth century," to employ the *more hibernico*, was not wholly surrendered to industrialism; no, for it was with individualism as well as industrialism that that epoch had busied itself; in America, it is Emerson, not Edison, who should be our guiding-star. We shrink from Emerson because he was superior; then, there is in his case the well-grounded suspicion that Emerson is a bit dangerous. The Emersonian danger is found in the fact that, when he wrote with black ink, his pen of iron indited a message of frank nihilism, and we hate to think America guilty of such an outrage; let Russians repudiate law; let Germans speculate upon socialism; but let it not be thought that America can be capable of revolt.

To trace the descent of nihilistic individualism in the last century is to return to German Romanticism, with its ideal of æsthetic personality; to French realism with Beyle and *beylisme;* to Slavonic nihilism rendered real by Gogol and Dostoievsky. Not forgetting Beyle, it may be said that Turgénieff's Bazároff, in *Fathers and Children,* was the first living egoist; Bazároff, the "bird of prey," soared higher than any one of Beyle's characters; psychologically, Bazároff is less interesting, less real than Dostoïevsky's Raskolnikow, in *Crime and Punishment;* his only advantage lies in the fact that he made his appearance six years earlier. Emerson came before the Slavonic and Gallic genius had pictured nihilism; the essay on *Self Reliance* antedates Stirner's *Ego* by the safe margin of three years. When Wagner and Ibsen were struggling with the problem of conformity and freedom, the emanci-

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pation of the ego was an old story to our Emerson. Shall we not style Emerson the first of modern egoists? Then, since these post-Emersonian revolutionists have made selfhood popular, shall we not have the courage to analyze Emersonian egoism, explaining where we cannot justify, considering where, perhaps, we cannot accept? If the ink was not too black for his page, it should not be too black for our eyes.

Anarchism.

In the world-old conflict between internal spontaneity and external organization, there can be no doubt where Emerson will take his stand. His Transcendentalism will transcend, it will transcend the social order. To Emerson, society was a conspiracy against the self which was forced to surrender the claims of culture to the need for bread. The result of the economico-social arrangement of mankind was to expatriate the human ego, who henceforth became but a "bastard and interloper in the world which existed for him." The ego lisps when it strives to say 'self;' the shibboleth sounds like 'society.' Having dwelt so long in the social order, the individual has forgotten that the supreme element of spiritual life, so frankly expressed by the ancient Jehovah, could be none other than an "I am that I am." Hence the time has come for man to take up his life in the truth, where he will no longer recognize friend or neighbor, father or mother; to these he says, "Unhand me!" Emerson assumes this anti-social attitude because he feels that society is incapable of that development which by divine right belongs to the individual. Emerson's distrust of the social, whose evolutionary capabilities are now advertised in every new work on Sociology, was due to his feeling that the evolution of society, like society itself, is nothing but illusion; where society forges ahead here, it falls back there; if it gains on the side of art, it loses so much instinct; where it is wiser it is weaker.

The anti-social character of Emerson's egoism is usually supposed to exercise and exhaust itself so thoroughly with

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the shallow question of conformity and consistency that his *Essays* may safely be read by the college sophomore, if not by the high-school 'senior.' In Emerson's non-conformity no one thinks to see the anticipation of Marx's strictures on the institution of private property, or of Ibsen's criticism of domestic relations. It is undeniable that Emerson was inimical to that social consciousness which uses the stage-whisper to indicate conformity, but the Emersonian polemic plunged deeper into the heart of the matter. Conformity was but a game of "blind-man's buff," in place of which pastime, Emerson would substitute the spontaneous activity of the self in which the anti-social and the anti-natural are set at naught. Is he not ready "to preach the doctrine of hatred when the doctrine of love pules and whines?" Let genius call, and he will shun father and mother, wife and brother; can he be a dutiful son or a chaste husband when he is not first himself? Where spiritual affinity binds him to those of his own kind, he will be all love and self-sacrifice; but where charity is miscellaneous, he will be so hard that every dollar wrenched from him can be but a "wicked dollar," and then there will come a bright, brisk Emersonian day when he will have the strength to resist all that is philanthropic. All this, as found in the essay on *Self Reliance*, bespeaks the hardness and blue-eyedness of the Emersonian ego; so sclerotic was his sense of selfhood that Nietzsche had no need to cry, "Be hard!"

In his conception of the political, Emerson was as rigorous with wealth as he has been seen to be with poverty. "Are the poor my poor?" he asks. Emerson saw nothing attractive or authentic in the old-time organization of souls whence have descended the institutions of property and law; the self is all, the State nothing. In the transcendental consciousness, with its beyond-seeing, society becomes an illusion about which we humans are somewhat superstitious. To make use of his *ipsissima verba*, "Every actual State is corrupt. Good men must not obey the laws too well." Man must thus be 'transcendental'; he must be

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'Beyond Man.' When Emerson informs us that he cannot recall a single instance of an individual who, "on the simple ground of his own moral nature, has steadily denied the authority of the laws," we wonder whether he is not indicating his own position according to which the moral should supplant the political, the individualistic the social. Saints have always been suspicious of the State, and it has been the Kingdom triumphant within rather than the Kingdom militant without that has enlisted them under its oriflamme. St. Augustine's *City of God* argued that the State was originally instituted on behalf of sinners, for the saints had no need of law; now the city of Cain is a poor parody on the City of God. If all were Emersons, if all men could realize the beyond, the transcendental within them, there were no need for those interesting institutions which express themselves in the forms of law and property.

The transcendental Yankee with all his shrewdness, with his ability to capitalize on the basis of the Lyceum those ideas which were quite anti-capitalistic, does not balk at the institution of property. "The world is governed too much," he thinks; let the State keep its hands off this "Kingdom of the me." At best, man can own no more than his own personality, but in taking possession of the private self, the ego secures possession of the whole earth. "All your aggregate existences," says his young radical, "are less to me a fact than is my own; as I am born to the earth, so the earth is given to me." The State misses the point when it turns its attention away from education to the economic; as a result, the State makes property degrading while it makes it possible for "the rich to encroach upon the poor, and to keep them poor." At this point, Emerson approaches the principles of Marxian socialism, but his essential aim is to enhance culture rather than to negate commerce. Like Wilde, in *The Soul of Man under Socialism*, Emerson seems willing to drop the question of property if he be allowed to lay emphasis upon culture. "To educate the wise man the State exists, and with the appearance of the wise man the State expires. The

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appearance of character makes the State unnecessary. The wise man is the State." Now, this is perhaps the best of Emerson's theoretical anarchy, even when it is not the most radical of its characteristics.

Like Marx, Emerson was unwilling to attribute to any man or group of men the act of choice whence the institution of Law and Capital was foisted upon the sons of men; it was "Necessity" which brought about the "vile compromise;" no deliberate act of mankind is to be made responsible for the "vituperated Sodom." Arising from Necessity, this predicament of the State is to be attributed to the weakness of man's will and the dullness of his intellect; but, where blame may not duly rest upon man as such, the case of the Conservative is not so clear. The Conservative makes of the State a sort of "strait-jacket;" he seeks to conserve a kind of "Chinese stagnation," which the radical would redeem by reverting to a "state of war or anarchy" whence the individual may be put upon his own mettle. It is not to be assumed that Emerson takes his transcendental stand by the side of the Reformer; indeed, he is a bit suspicious of the Reformer; nevertheless, Emerson enjoyed all disorganizing tendencies in civilization, while his preference for the Reformer rests upon the idea that the Reformer bases his principles upon ethics. The planet is peopled with conservatives, thinks Emerson, and this may be because, as Anatole France suggested, "ours is the planet of hunger, the place where one eats," just as Cabanis had had the insolence to define man as a "digestive tube." Emerson's hope in the midst of the social "predicament" reposed in the idea that "one Reformer may yet be born." One? we ask; must he be a Transcendentalist?

Owen and Fourier were known to Emerson; the personality of the one and the philosophy of the other made their appeal to his open nature. In the Massachusetts of the forties, little oases of socialism had sprung up; Emerson was at least interested. Emerson could wish that the world might be 'Fourierized, humanized,' and yet there was ever the transcendental scruple against system with

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its lack of a Beyond. Fourier, he thought, had skipped one fact, and that an important one,—the fact of "Life:" now, Life scorns systems and system-makers; Life is elusive, progressive, surprising. Life must be the beginning and the end of all social arrangement, and it is a question whether Life is socialistic. With this general scruple against socialism, Emerson's strict nature could not endure the consequence which, from the time of Plato, seemed to follow upon the abolition of private property; that was the institution of marriage. As if the French had not always been fine feminists in their psychology, he accuses Fourier of failing to understand the nature of woman; to be more definite, the Transcendentalist was rather shocked at the sex-consequences of the new scheme of civilization, while he feared the practical outcome of the plan, when submitted to the "lawless crew" that usually sails under the colors of humanity.

Emerson's best and fondest anarchism was thus of the theoretical nature; it finds its expression in the essays on *Circles* and *Nominalist and Realist.* The substance of the discourse on *Circles* is to the effect that there are none; the eye and the mind may draw them now and then, but the world as such scorns all limitations. "The only sin is limitation;" that is, the habit of drawing circles about the will is the great Bad. We as humans within this or that circle must be prepared for Surprise, *die Überraschung* which Nietzsche so strangely condemned for Nietzsche himself built his system upon *Überraschung.* Emerson is prepared for surprise, since he feels capable of abandon, the Dionysian of Nietzsche. In his treatment of that human trait whereby the intellect draws its finished circle around a certain arrangement of facts to make of these a system or an institution, Emerson was Nietzschean in his avowed Nominalism. Where Realism, Platonic or Scholastic as it may be, comes to its conclusion and thus establishes a Republic or a Church, Nominalism insists upon the individual fact, whether thing or person. Plato had trouble when he sought to subsume all things under the

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Idea; Anselm's Realism could not prevent the rise of Nominalism, or the principle of individuation, or the supremacy of the will; Hegel's Absolutism aroused the revolutionary egoism of Stirner. Emerson resisted the synthetic tendency, which ever tends to make man pliable and stuff-like.

In the elaboration of an anarchistic Nominalism, Emerson coined certain delightful expressions, such as the "imperfection of individuals" and "to embroil the confusion." In dilating upon self-reliance, Emerson has no better imperative than, "Insist upon yourself;" now he is in a position to put an edge to his maxim, for he can say, 'Insist upon your individual imperfection;' 'embroil the confusion.' If man is socially perfect, the State can treat him as a unit, modern sociology can define him as a 'social cell.' Fancy Emerson as a 'social cell!' Imagine the Transcendentalist taking his place in the social ranks! Alas! for 'social ethics' if America had its Emerson to-day! Nietzsche does not nullify the smug social program because Nietzsche was insane; but here was a sane Superman who said, "A strong person makes the law and custom null before his own will." Do we not have to settle with such strength, or must we indeed submit to the social bundling and baling of souls as this takes place in every quarter where 'efficiency' has entered the brain? All who are good are efficient; Emerson was not efficient: Emerson was not good. So runneth the social syllogism. Alas! Camestres! Alas! Emerson!

Indifferency, then, and not efficiency was the summit of Emersonianism. We must insist upon that degree of imperfection which shall save us from classification. "Democracy runs to anarchy, but in the State and in the schools it is indispensable to resist the consolidation of all into a few men." In the midst of this play and counterplay of constructive and destructive forces, the Transcendentalist waits in faith and hope believing that the Best will come. But, meanwhile, what? The Emersonian "Meanwhile," that transitional period of reform with the

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average man, was characterized in manner likely to shock the serious social thinker. 'Meanwhile' Transcendentalists beguile themselves with "jokes" and "crimes," with "eating and sleeping." Of course, Emerson had more serious moments than the foregoing would seem to indicate; he preached both activism and indifferentism. "The whole frame of things preaches indifferency. Do not craze yourself about thinking, but go about your business anywhere." Is this the dilettantism so well known to the French from Montaigne to Voltaire, from Ernest Renan to Anatole France? Like Voltaire, Emerson turned to the garden when his eyes lost sight of truth in the skies. If life is a "bubble, a skepticism, a sleep within a sleep," then "dig away in your garden." This we may believe, came into Emerson's mind directly in accordance with his appreciation of Nature and her ameliorating influences, not because he had been reading *Candide*. Let the Sphinx answer her own questions; for ourselves, "we will do as we do."

Immoralism.

Emerson was a slick cat that could climb up to the shelves of the apothecary, and move about without disturbing a bottle; in the midst of these moral meanderings, he purred with strange contentment. Individualistic Nominalism with its transcendental possibilities has had no trouble with the idea of the State; how does it fare when the synthesis is one of principles rather than one of mere external laws? Emerson displayed an unwillingness to abide by the superior limitations usually indicated by the terms 'good' and 'bad;' his ethics will be antinomian; that is, "hypernomian." In this Emersonism, we have the original form of the Nietzschean "Beyond Good and Evil." Transcendental where the question was one of the social State, Emerson was hypernomian in his treatment of social morality. In the Emersonian Beyond, that summit which provided no more space than that which the individual would occupy, 'good' and 'bad' are like the foot-hills with

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their little valleys; Emerson was thus Ibsenesque in his fondness for the 'heights.' In order to prepare ourselves and our consciences for the hypernomian transcendence of conventional morality, let us recall the fact that, like Blake and Nietzsche, if not like Stendhal and Wagner, Emerson was consecrated to the idea of the Strong. He had no Siegfried or Zarathustra to bear his message, so he bore it himself; his was the 'conscience of the Viking;' he himself was the 'blond beast,' the *bête blanc* with its blue-eyedness.

Dipping his pen into the blackest ink, Emerson used no blotting-paper; or was sand the absorbing medium of a writer in the forties? The sources of Emerson's joyous immoralism are not easily identified, since the Transcendentalist was not in the habit of proceeding from historical premises to his personal conclusions in the present. Behind his hypernomian assertions lay the good and great realm of nature, upon the authority of which Rousseau had seen fit to negate the institutions of culture and civilization, just as Schiller had in the same manner found it possible to exalt the character of the 'naïve' poet. And Emerson likewise; did he not feel that he was child of the Naïve? Then, like Schiller, Emerson was at home in a Paganism which knew no distinctions of inner and outer, joy and sorrow, good and bad; Emerson knew that the 'first empire,' that of the flesh, had given way to the 'second empire' of the spirit, but he confesses that he was glad to observe that "the Pagan world had stood its ground and died hard." To naturism and Paganism, Emerson added the pre-Christian qualities of the old Germanic and Scandinavian world-orders, where lawlessness and wild strength gave a strange sanction to life as such. Like Wagner and Ibsen, Emerson drew strength from the Sagas; hence we hear him saying, "Let us enter into the state of war and wake Thor and Woden, courage and constancy, in our Saxon breasts." Then, in the midst of these more remote sources of inspiration, Emerson felt the influence of the American Indian with his predilection for war and wandering.

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Wild strength was the category upon which the hypernomian life-ideal was to be built. Take such a text as the following, and see whether Wagner, Ibsen, or Nietzsche has been capable of a greater degree of hardness: "Wild liberty develops iron conscience!" Like Nietzsche, Emerson was in the habit of concluding that Christianity had been responsible for that weakness which had caused the moral life to lose the vigor peculiar to "wild virtue," according to which the healthy moral will had found it possible to resist all compassion and compunction. If conscience, the Darwinian conscience of 'sociability,' tends to make us weak, the will must make us strong. "Nature, as we know her, is no saint. She comes eating and drinking and sinning. Her darlings, the great, the strong, the beautiful, are not children of our law; do not come out of the Sunday School, nor punctually keep the commandments." What, then, shall the Hypernomian do? The Hypernomian must follow nature; "if we will be strong with her strength we must not harbor such disconsolate consciences, borrowed too from the consciences of other nations." If there must be goodness, let it "have some edge to it;" our existence is an existence indeed, not an 'expiation.'

Strength sanctions hypernomian morality; at the same time, it is strength which affords the ground of judgment, whence all ethical distinctions are made. The Transcendentalist must will under the form of the Strong, must judge in the light of the same dynamic. Virtue, so Emerson tells us, arises in the moment of Spontaneity; from the spontaneous soul all moral distinctions proceed. "No law can be sacred to me but that of my own nature. Good and bad are but names very readily transferrable to this or that; the only right is that which is after my own constitution; the only wrong what is against it." In the same manner, Emerson sought to base moral distinctions upon the clear intellect; where the will is strong and the intellect clear, there can be naught but the good. Why the sadness of the saints? The saints do not see that, since it is in-

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tellect rather than conscience which makes the genuine moral distinction, "the only sin is limitation." Where there is volitional weakness and mental diminution, there is sin; where man is strong and boundless, man is moral.

Since Darwin, all 'scientific' moralists have been in the habit of transferring conscience from its esoteric seat in an inexplicable 'intuition' to the exoteric position of the social order. Since the days of Darwin, morality has been deluged with social ideals so that at the present moment no one can be 'moral' unless he is intoxicated with the idea of social service. Emerson lived between dates which knew little or nothing of these socializing extravagances; he was able to rejoice in the ideal of self-culture before humanity capitulated to the notion of social service. Were he with us to-day, would he not challenge this smug ideal? Would he not ask, What do you mean by your 'social?' Is your 'social' a concept broad enough to include superior souls, or is it forever limited to the populace, the immigrant population? And service, likewise; how can one human being serve another? Hands and feet he may be, but not brain; the individual must do his own thinking. Hence, do not talk of 'society' until you have invested that term with due and sufficient content, nor prate about 'service' until you know somewhat about the essential needs of humanity. Emerson's own attitude was that of the superior man, the Greek god. He fears that we may "be ruined by our good nature." Like the Apollo whom he so ardently admired, Emerson felt that he was "born into other politics" than those which are peculiar to the "turmoils of earth;" his true attitude is one of repose in the "eternal and beautiful." In this manner, the Transcendentalist inoculates us against the social distempers which tend everywhere to infect us; when once we have read his black message, we cannot surrender to the pale ideals of contemporary ethics.

As to optimism, that subterfuge of the shallow-minded, dare we attribute such softness to our Emerson? Emerson was cheerful, but his smile was born of the sense of strength;

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he was hopeful, because he felt that he held the secret of the universe in his own brain. Perhaps we can come to an understanding with the Transcendentalist if we forego the desire to dilate upon the respective merits of the optimistico-pessimistic controversy; if we admit that, with all its penetration, with all its insistence upon the Ideal, with all its refusal to accept a rapid, temporary solution of the life-problem, pessimism is often open to the charge of weakness, of Schopenhauerian No-saying. Of this pessimistic passivism Schopenhauer was guilty, and so was Wagner; not so Emerson, or Nietzsche; theirs was the 'pessimism of strength.' If the optimists can gather comfort from Emerson's perpetual Yes-saying, they are welcome to it; the pessimists may rest content in the consciousness that Emerson, even as he said, "awoke expecting nothing from the universe;" the universe had given him a will, and that sufficed him. In one of his earlier essays, that on *The Tragic*, Emerson made due overture to sorrow when he declared that, "as the salt sea covers more than two-thirds of the surface of the globe, so sorrow encroaches in man on felicity." If Emerson had any tinge of optimism, it was not the optimism of assumption; Transcendentalism was far from felicitarianism, for pleasure was to him but a means of swelling vein and muscle with strength.

Irreligion.

Emerson at the very latest dates is thus full of surprises to all mediocre minds and to individualists as well. With a gentle but persistent anarchism, with a firm but healthy immoralism, he could do no more than complete his program, and thus take his place among the irreligionists. Let us out with it at once, and have it over; then, we may be able to find some justifying solution for his intellectual and volitional diabolism. Emerson escaped, aye, he delivered himself, from the morbid Satanism of the Poe-awakened Baudelaire, for even in his blackest utterances he was joyous and confident. He lived wholly from within, not like Baudelaire and Huysmans, whose Within was

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an underground chamber of the dark and damp, but with an Inwardness lofty and airy. When a friend suggested that his strictures upon certain doctrines of the Church, instead of coming from above, as Emerson had avowed, might perhaps come from below, he refused to be smoked out of himself, and replied, "If I am the Devil's child, I will live then from the Devil." This resolution, we may imagine, was due to his desire to 'live his own life,' to 'will himself,' as we say to-day. Upon another occasion, and one quite uncalled for, Emerson expressed a certain satisfaction in the consciousness of Satanism of which apparently he had no desire to rid himself. Upon a fine New England morning, he awakens to find the "dear old spiritual world, and even the dear old Devil not far off." Again it was the consciousness of strength, at once of Milton and Blake, that must have prompted this sweet utterance.

Emerson's joyous diabolism was at times more calculated and convincing; where strength was his major premise, sin was his major conclusion. "It is an esoteric doctrine of society that a little wickedness is good to make muscle;" thus equipped, the strong conscience has the strength to "run like the wild goat and the wolf." In the case of the strong individual, the debt to vice must not be disowned; "in short, there is no man who is not at some time indebted to his vices, as no plant that is not fed from manures. Man, however, must grow up and develop out of such soil. As Sudermann's Magda expressed it, "We must sin if we wish to grow; sin and then grow greater than our sin." Was not Emerson willing to be classed with the goats rather than the sheep?

In the elaboration of the irreligious ideal of strength and progress, Emerson did not fail to avail himself of those principles of Nominalism which, since the days of Duns Scotus, have delivered the individual soul from all that is authoritarian. It was Emerson's dialectical desire that "the universe be kept open in all directions," a maxim of pragmatic significance, although our Anglo-American Pragmatists have not the will to view their neat doctrine in the

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strong light of irrationalism and immoralism, for which reason they cannot claim Emerson as a prophet of the cult. In his desire for an 'open universe,' Emerson indulged in sentiments quite blasphemous; this appears when he says, "Jesus would absorb the race, but Tom Paine or the coarsest blasphemer helps humanity by resisting this exuberance of power." At this point, it may be noted that Emerson had a theory of profanity which was to the effect that all appeal to the sacred, God, Heaven, and the like, is affirmative in its metaphysical import, while the converse appeal to Hell and the Devil signifies the negativistic and destructive. It was perhaps because of his implicit nihilism that Emerson found a place for Diabolism and blasphemy.

On the practical side of worship, the biography of Emerson informs us that early nineteenth-century Unitarianism was too narrow for the Transcendentalist's idea of belief and sacrament; like Parsival, Emerson was unable to comprehend the meaning of the Lord's Supper, but unlike Parsival no sense of pity ever came to enlighten him. Emerson's attendance upon church service seems to have shown him no more than that Transcendentalism was sorely lacking in the pulpit; for himself, he feared no Day of Judgment, but kept his blue eye open to that principle of Eternal Justice referred to in the essay of *Compensation*. His wife, who must have learned certain transcendental lessons in the home-circle, once said it seemed wicked to her to go to church; Emerson himself was willing to indulge in a kind of Pagan prayer, "the soliloquy of the beholding and jubilant soul," but most prayers seemed to him like theft. "As men's prayers are a disease of the will, so are their creeds a disease of the intellect." Furthermore, we may imagine, if the universe is only the home of the Over Soul, the affairs of the universe will be adequately taken care of; if the prayers of the Psalmist prevent the dawning of the morning, such outpourings, when viewed transcendentally, can amount to no more than a kind of "chirping" before the appearance of the Immortal Light which,

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however, needs no such solicitations. Such was the *gaya scienza* upon the basis of whose premises Emerson was able to come to his transcendental conclusions.

Re-adjustment.

Are we not correct, then, when we assume that our Emerson must be read anew in the fresh light of individualism? The need of Emersonian nihilism is painfully apparent in our culture to-day. If we could forget all that has been said on the subject of education, and could remember Emerson's immortal address, *The American Scholar*, delivered in the year 1837, our intellectual life would be far more sound and satisfactory than it is at the present hour. Hordes of aliens from Europe have aroused within us a peculiar sense of social responsibility, whence much of our philosophy of social service springs. But, the exigencies of the immigration problem are no greater than the demands for genuine American culture. Let 'night schools' teach the immigrant how to succeed in his new world, but let us not forget that we have a duty to our own youth for whom school and college provide none of the opportunities which are calculated to produce future Emersons. Shall we let the immigrant destroy our intellectualism? If we must hold up his hands, we must teach our Americans to hold up their heads. At a time when all free intellectualism has been thrown to the winds of sociality, it is well to reconsider the claims of inward ideals and remote interests, as these were presented by the most penetrating of American minds.

But, to pay tribute to the supremacy of the Emersonian ideal is not to accept all the particular conclusions which the Transcendentalist felt so free to draw. We would not for a moment suggest that the sincerity of our Nihilist was wanting, but in the midst of many of his clever displays of opinion, we have the suspicion that he may have stacked his cards and indulged in a false shuffle, since the position of every ace and deuce seems perfectly well known to his hand. In the midst of spiritual storms, as these were hardly

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weathered by Ibsen and Strindberg, it looks as though our Emerson's barque had not gone to sea at all, but had ridden at anchor in Boston Harbor. Then, with all his merry references to the problems of the State, it seems as though his thought had never felt the full force of the nihilistic ideal as we are compelled to brunt it to-day. Knowing little or nothing of the realization of the immoralistic ideal, as this now confronts us, he was more ready than are we to play with the concepts 'good' and 'bad.' The same may be said of Emerson's cavalier-like attitude toward the problem of religion, discussed as it was by him at a time when irreligion as such was not the sombre fact that it is in contemporary life. Emerson seems thus to have conjured up ideas of anarchy, immoralism, and irreligion; in our case, these notions thrust themselves forward of their own force.

On the subject of irreligion, Emerson was as near insincerity as it was possible for such a mind to be. While Emerson broke with the Unitarian church as such, he seems never to have departed from the theistic moralism of that sect, so that his irreligious wanderings were always conducted within sight of well-known paths. In this manner, Emerson's Diabolism was by no means as heartfelt as was the case with Huysmans and Strindberg. Unlike the great Swedish pessimist, Emerson could not say, "How terrible to search for God and find the Devil! Well, that is what happened to me." Emerson searched after God and found the Over Soul. To be more definite, Emerson was profoundly and permanently affected by the Spiritualism of Swedenborg; so was Blake; so in a measure was Kant; so was Balzac. But, with Emerson, as with the late Professor James, Swedenborgianism acted as a sort of fourth dimension, whereby the Transcendentalist and the psychologist had a way of escape when pressed by those facts which are usually supposed to be limited to the three dimensions of space. Those who have no such secret stairway up to the heights of spiritual life are not so ready

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to play with men's prayers or the varieties of their religious experiences.

Unlike other irreligionists, Blake, Wagner, Ibsen, Strindberg, Emerson kept his notions within such bounds that he never attempted any innovations with the question of sex; in this one fact, he escaped the criticism that has been brooding over the modern drama. A dilettante, Emerson was no decadent, so that he never felt the need of self-repudiation or repentance. His essay on *Love* has nothing erotic about it; indeed, the very suggestion of the sensual made him "shrink and moan," while memory was embittered with "infinite compunctions." This moralic quality in a nature more than usually pure made Emerson so oblivious of the Magdalen that he felt no need of an intercessory Madonna. With Baudelaire, it was necessary for the poet to repose in a kind of Catholicism; Wagner demanded both Buddha and Christ to save him; Strindberg felt constrained to make the journey to Damascus. With Emerson, then, shall we not say that he but played with immoralism and irreligion? Black as was his ink, he knew no Black Mass; not having been tempted, he cannot save those who are tempted.

The spirit of the times has changed since the days of Emerson's *Essays* and his Harvard *Addresses*. More than a generation ago, we learned from the Scandinavian and the Slav that life is largely a matter of striving and suffering; Ibsen and Strindberg, Dostoïevsky and Tolstoi have disclosed the bitter roots of humanity, so that we cannot repose in the pleasant pessimism of our great Transcendentalist. We have learned that to be one's self, man must will himself, while the path to personality is often accompanied by a peculiar acquaintance with grief. But, if our Emerson, with his gentle immoralism and irreligion, knew naught of these things, it does not follow that he was wanting in greatness, still less may we conclude that the nation does not need him to-day.

CHARLES GRAY SHAW.

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DIVORCE AND MORALITY.

E. S. P. HAYNES.

IT IS sufficiently difficult even in ordinary matters to distinguish the border line of law and morals but it is doubly so in regard to the question of marriage and divorce. Generally speaking, wise legislation does little more than sweep away obstacles to right doing, and protect men as far as possible from liability to wrong doing. The legislator will erect a railing or a high tower to protect sightseers from vertigo but will not erect a cage to prevent their committing suicide. The State exists to promote the "good life" in the Aristotelian sense but cannot at all directly interfere with the private life and motives of the citizen. For example, the State takes cognizance of marriage; the question of unions outside marriage concerns not the State but (if anyone) the moralist.

There is, however, a certain confusion in the public mind as to the respective functions of the lawyer or legislator and the moralist in regard to marriage and divorce. The authority of the Church is rapidly disappearing; the Church claimed the ethical sanction which the modern moralist claims though on different grounds. The time has therefore come to reconsider the attitude of the State and how far it is entitled to take over the powers of the Church as opposed to the claims of the moralist.

I therefore propose to deal with the following points;

(1). The point of view of the State (2) The point of view of the moralist, and (3) The interaction of law and morality in this particular connection.

1. Taking first the point of view of the State I conceive that the universally approved object of all divorce facilities is to promote where necessary the welfare

(a) of the family (including parents and children).

(b) where there are no children, of the spouses themselves.

(c) of the State itself.

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(a) The first object of the State is to secure for all children, wherever possible, the joint care of both parents. Too often death destroys this ideal but it is equally destroyed where one of the parents is guilty of desertion or gross cruelty in any form, or becomes insane or hopelessly incapacitated by any other form of disease. The question of moral guilt is irrelevant as regards the welfare of the children except in cases where moral guilt inflicts a more serious injury upon them than death or disease would. Thus, to take an analogous instance, it is immaterial for the beneficiaries under a will or settlement whether a trustee has been sent to prison or taken to drink or drugs. In either case they want to remove him. The fact of incapacity for parenthood once fully established, the State is simply concerned with the relationship of the spouses *inter se;* this brings me to the next head of the subject.

(b) The second object of the State is to secure certain rights to the spouses *inter se,* for example, to enforce such economic rights as marriage creates for the husband or wife, as the case may be. Clearly, the wife is in most cases entitled to financial support if abandoned by the husband, and the husband is entitled to disown such obligations if abandoned by the wife. The degree to which the marriage contract has been observed or violated by either or both parties is therefore obviously bound up with the economic aspects of marriage. But the modern State has almost entirely given up the idea of interfering with the private relations of the parties, as these were and are interfered with in Catholic countries by the Catholic Church, or between 1857 and 1884 by the State in England, for example, by enforcing cohabitation on pain of excommunication or imprisonment. Divorce is naturally and in fact much rarer in cases where there are children of the marriage; and when there are not modern States will more and more recognize, as many of them already do recognize, the justice and expediency of divorce by mutual consent, subject to necessary time limits and financial safeguards. Such divorces are effected either by mutual consent *eo*

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nomine, by separations maturing into divorce, or by the legal fiction of collusive divorce for collusive adultery or any other matrimonial offence. When once the question of the children has been satisfactorily decided, the relationship of the spouses becomes a purely private relationship.

(c) The welfare of the State reposes entirely on the rearing of good citizens. The State is therefore not concerned with extra-matrimonial unions except where children result. To achieve for such children equality of opportunity and decent advantages by enforcing their rights as against the parents, ought to be the first care of the modern State, and no doubt will be so when the ecclesiastical tradition of hostility to children who have had the audacity to get born without a preliminary fee to the church, grows weaker. In a few States there may exist prohibitions of remarriage for a guilty spouse; but this is no real exception to the rule I have laid down because the State cannot restrain such persons from cohabitation outside marriage.

I have roughly sketched what I believe will be the attitude of the modern State to these matters without dealing with existing divergencies in detail because I am not writing an essay on what the divorce laws of the world are or even what they ought to be. I am merely attempting to indicate where the sphere of law ought to end and the sphere of morality ought to begin. Let us therefore now consider the sphere of morality and the point of view of the moralist.

2. We may first note that the moralist in the older civilizations of the world, *i. e.*, in France, Italy, Spain, and Russia, as also in countries like China and Japan, concerns himself mainly with the question of family obligations and human happiness, and not with the question of sexual laxity *per se*. In English-speaking countries the question of sexual laxity fills the foreground of the discussion; the opponents of divorce are at pains to assert that it increases, its supporters that it diminishes, sexual laxity as if this decided the whole question. But in countries like China and Japan sexual laxity is not necessarily associated with any disregard of parental obligations, and this is also the

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case in countries like Russia and the Latin countries, though it is of course an offence against the traditional morality of the Catholic Church, and probably for that reason adultery is a criminal offence in Italy and Spain. Nevertheless in these countries where women are so frequently married out of the convent to a husband on grounds of pure convenience (a fact which converted Napoleon to divorce by consent) it is not surprising to find the ancient social convention of a quasi-recognized lover, and at least an implicit if not explicit accceptance of the fact that a woman may be an excellent mother even though she and her husband are not technically faithful to each other. The desire of the English or American moralist to discuss the question of divorce from only one point of view is due partly no doubt to a certain prurience of mind common to vigorous Puritans and pious anchorites, (though this is only one of many complex factors) but mainly to the mental timidity and confusion that prevails on the whole question of sex.

The English speaking races are often accused of hypocrisy because they profoundly believe in "suggestion" as the best means of promoting good conduct and particularly what they call "purity." They think it dangerous to discuss or reason about such questions because they fear that open discussion would endanger the peace and order of their society. They are too intellectually indolent to tackle a complicated and difficult problem on its merits; they prefer a compromise whereby, having been taught as children that extra-matrimonial relations exist only in quasi-criminal circles, they conspire when older and in other respects wiser, to maintain the same preposterous fiction, and as its logical consequence the social buttress of prostitution. In a spirit of protective mimicry the transgressors against this code pay the homage of hypocrisy to what passes for virtue, and even if discovered acknowledge to themselves as well as to others the justice of their social condemnation just because they have blindly accepted this social convention all their lives. They have broken the one rule of the game which is—not to be found out.

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In such a climate of opinion it is not surprising to discover that sexual laxity is the obsessing side of the problem, and that the odious aspects of chaining two incompatible persons together are completely ignored, though vividly denounced by John Milton in one of the greatest achievements of English prose.

Even were sexual laxity to be the sole test of divorce legislation the moralist is wrong because divorce laws never directly *cause* laxity. Such laxity is purely the social result of social causes; it is quite as characteristic of European society when it was built upon a theory of indissoluble marriage as it is of the ancient world or the modern State. In fact our medieval ancestors lived far more loosely than we do; they were morally purified and socially rehabilitated by confession and absolution as often as they wanted it, and where such offenders were brought before the ecclesiastical courts they were let off quite easily as I recently showed in the Fortnightly Review (May 1913). The divorce laws of ancient Rome, which were the embodiment of substantial justice and sound common sense, never became a cause of scandal until the new wine of Greek ideas burst the old bottles of Roman tradition, and even so such scandals as existed could have been prevented by substantial time limits. "*Quid leges sine moribus?*" was the very pertinent question put by Horace, and "*Quid mores sine legibus?*" is the still more pertinent question which the opponents of divorce law reform in England are incapable of answering.

The word "moralist" can of course be used both in a good and bad sense. In its ordinary sense it means the man who defends the moral code of his own time because he is unable to think of anything better than that to which he has been accustomed. Contemporary moralists may be roughly divided into Catholic, Calvinistic, and Secularist. The Catholic moralist bases his ethical opinions on Catholic tradition and the Calvinist on the traditions of Geneva—which have so profoundly influenced the English speaking world; the Secularist attempts to solve these

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problems on rational or humanistic lines, though in practice he often relapses into the clerical tradition that no privacy should be too sacred for police interference. All types, however, generally combine to oppose any legal change that seems inconsistent with the prevailing code of morals. It is interesting in this connection to read the answers of the lawyers selected in each American State to the inquiries sent out by the Divorce Law Commission in England. Whether the answer comes from South Carolina, where the "standard of conjugal fidelity is so high" as to necessitate a law that no man may leave more than one fourth of his property to his mistress and illegitimate children, or from South Dakota or Nevada where the procedure is farcical and the law very happy-go-lucky, the almost invariable reply is that there is "no demand for a change in the law" and that the moral condition of the State in question could not be better. The lawyers are in this instance merely expressing their views of their clients and taking upon themselves the function of the moralist. The moralist ought to collaborate with the State but too often remains satisfied with the existing code of morals.

3. This conservative instinct of the moralist is responsible for a certain interaction of law and morality because even lawyers and legislators are occasionally in advance of their time. In the United States the tendency to experimental law-making frequently stimulates the ethical discussion of problems first presented as legal problems or even as new statutes, and there can be no doubt that if Lord Palmerston had invoked a referendum on his great Divorce Statute in 1857 it would have been strangled in its cradle. The acceptance of divorce as a fact for the richer sections of the middle class undoubtedly affected the moral code of England and in no way more than in the new ideas that began to grow in regard to the rights and duties of married women. Yet the broad fact remains that if the statute had been opposed to the main stream of ethical ideas it would have remained a dead letter just as one notices how seldom the well-to-do classes availed

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themselves of the Scottish law from 1600 to 1800. It is therefore by no means clear that the moralist or even the moral philosopher is a better custodian of social morality than the lawyer or legislator, especially where that morality is complicated with religious taboos and prohibitions, and it follows that the general public should not be too easily frightened by the opposition of so called moralists; particularly when, as in the case of divorce, the lawyer proposes to do nothing more than enlarge the liberty of the subject with the full knowledge that this legal liberty will be severely controlled by purely social sanctions.

E. S. P. HAYNES.

LONDON, ENGLAND.

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PROCEEDINGS OF THE CONFERENCE ON LEGAL AND SOCIAL PHILOSOPHY.

The second meeting of this conference was held at Chicago, Friday and Saturday, April 10–11, 1914. The sessions, Friday morning and afternoon, were held in coöperation with the Western Philosophical Association at the Law School of the University of Chicago. On Friday evening, a dinner was given to the members of the conference by the local delegates from Northwestern and Chicago Universities. The dinner was followed by an informal discussion on the advancement of philosophic jurisprudence.

The last session was held Saturday morning at the City Club of Chicago and was devoted especially to the discussion of the significance of the recent tendency to introduce commissions in the administration of justice.

The Executive Committee of the conference was enlarged to consist of the following: J. H. Tufts, chairman; Henry M. Bates, John Dewey, W. F. Dodd, Warner Fite, Ernst Freund, Alfred Lloyd, N. W. McChesney, Roscoe Pound, T. R. Powell, Frank Sharp, Albion W. Small, Frank Thilly, John H. Wigmore, and M. R. Cohen, secretary.

The expenses of the meeting amounting to $33.80 were met by voluntary contributions.

M. R. Cohen,
Secretary.

Summaries of the papers read are as follows:

In Defense of Natural Rights. Warner Fite.*

The older theory of natural rights meant non-interference, the appeal from external control to private judgment. At present the tendency is to say that the individual is a product or function of society, so that he has duties to it, while it has none to him. The truth is we are products of our conditions only so far as we do not know what is going on in us. All values are created by consciousness. If a watch knew itself, it would have value for

*Summaries thus marked were made by Professor G. A. Tawney.

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itself, and would have claims against its owner. The obligation of others to respect my rights is relative to my consciousness of my rights—this because the power to realize an end lies in the consciousness of it. What we are internally is what we produce self-consciously; all our authority as individuals is relative to this, and this is the new doctrine of natural rights. It asserts the superior rights of the more intelligent, for might does, in this sense, make right. The fundamental moral problem is that of fair competition; the moral struggle is a struggle of personal rights against vested privilege.

In the discussion which followed this paper Professor Fite set up as the basis of enforced social coöperation the distributive principle of individual good—each according to his intelligent share, and not each according to his ability to take and keep. The theory of natural rights holds that, however far ahead we may look, we should remember to conserve our own enjoyment as individuals.[1]

JUS NATURALE REDIVIVUM. M. R. Cohen.

While in America those who still speak of natural rights are generally antiquated jurists who are ignorant of the progress of European thought in the nineteenth century, there is today among advanced European thinkers of diverse schools a noticeable revival of natural law theories. To appreciate this movement we must analyze the classical objections to the older natural law theories and show that these objections have not touched the essence of the matter. The main objections have been the historical, the psychological, the legal and the metaphysical.

The historical objection proceeds as if dogmas as to past history, *e. g.* concerning a supposed state of nature, are necessary parts of all doctrines of natural law. But the fact is that Grotius, Hobbes, Rousseau, etc., when speaking of the state of nature refer essentially to something in the present.

The psychological objection is brought against the conception of an individual existing outside of organized society and yet capable of making rational social contracts. But a careful study of the history of the doctrine of natural rights shows that contractualism is not a necessary part of it.

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[1]For an account of the discussion following each paper see *Journal of Philosophy* XI. pp. 345–f.f

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The legal objection is that since the law is the will of the sovereign, or a system of established rules, questions of natural rights do not concern the jurist but are matters of ethics. Against this it can be shown that judges in the ordinary course of their work always do and must rely on their sense of justice. This is especially true of the United States where the bills of rights in the state and federal constitutions consist essentially of vague moral maxim, such as due process, equal protection of laws, etc.

The fourth or metaphysical objection proceeds on the assumption that all things are relative, in the sense that it is futile to look for unchangeable laws. But while it is true that particular rights have no meaning apart from the social conditions under which they must be applied, the principles according to which they are to be decided are relatively permanent. The unity of human culture is empirically, as well as theoretically, well founded.

A theory of natural rights or legal justice is thus seen to be not only possible but even unavoidable. To escape the errors of the older theories we must be careful not to rely on supposed self-evident principles, such as equality before the law, the right to life, the right to the product of one's labor, etc. On examination, the principle of equality is seen to be very obscure and to lead to flagrant injustice when interpreted literally, as meaning *e. g.*, that all guilty of the same act shall receive the same punishment. The right to life and the right to the full product of one's labor cannot both be unqualifiedly true, since they conflict in the case of the hopeless invalid, etc. Thus it is seen that a theory of legal justice requires systematic criticism from the point of view of the principles used and criticism from the point of view of the wealth of factual situations to which these principles are to be applied. For this task neither philosophers nor lawyers alone are qualified. Only by systematic coöperation between the two can this be achieved.

THE NOMENCLATURE OF LEGAL PHILOSOPHY. John H. Wigmore.

Dean Wigmore spoke of the transformations which the law is undergoing and of the need for a philosophic analysis, such as is found in Green's "Principles of Political Obligation," to enable us to obtain an intelligent grasp of the business of the law as a whole.

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As a help in enabling us to make the problems of the philosophy of law more definite, the following classification of the branches of legal science (nomology) was proposed:

- Nomology
  - I. Nomoscopy
    - a. Nomophysics
    - b. Nomostatics
    - c. Nomogenetics
  - II. Nomosophy
    - a. Nomocritics
    - b. Nomothetics
    - c. Nomopolitics
  - III. Nomodidactics
  - IV. Nomopractics
    - a. Nomopoetics
    - b. Nomodicastrics
    - c. Nomodrastics

I. Nomoscopy studies law as it is, and its branches are description, explanation, and history.

II. Nomosophy is the science of the law as it ought to be, logically, ethically and politically.

III. Nomodidactics deals with the law as a teachable doctrine.

IV. Nomopractics deals with the law as it must be brought into the actual conduct of men, and thus deals respectively with (a) law-making or legislation, (b) the application of law to actual cases, and (c) the enforcement of law in making it prevail over antagonistic forces.

THE MORAL CRITERION IN SOME RECENT DECISIONS OF THE UNITED STATES SUPREME COURT. Frank Chapman Sharp.

That the law is utilitarian and ought always to be interpreted and developed with this truth in mind is recognized by practically every present-day student of the subject. But this view of the matter is too vague to be of very much practical value. The pressing problem is how to proceed when interests conflict, and it is here that the most important differences of opinion among our judges arise. In matters which concern the claims of individual liberty, the privileges of property, and the demand for equality of treatment, a definite answer has been gradually worked out by the Supreme Court of the United States and has been for the most part consistently employed in its decisions. It is most succinctly formulated in Bacon *vs.* Walker (1907), in the declaration: "The power of the state . . . extends to so dealing with the conditions which exist in the state as to

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bring out of them the greatest welfare of the people." The principle: Infringement upon the claims of individual liberty, property, or equality is justified when necessary for the attainment of a greater good, has been applied in a great variety of decisions so that its meaning is unmistakable. That this principle is morally a just one would be agreed by the overwhelming majority of the ethicists of our generation. This fact is significant. For in interpreting the vaguely worded guarantees of the Fifth and Fourteenth Amendments of the Federal Constitution, the Court has been compelled to build up the law through a process of judicial legislation. And judicial legislation, like all other forms, is under obligations to be guided by principles of justice. Most of the state courts have had to start from constitutional provisions essentially the same in content as the amendments in question, and to make use in a similar manner of the process of judicial legislation. If then the authority of the Federal Supreme Court and the consensus of ethicists are worth anything, it would seem that these state courts ought to bring their decisions more closely into conformity with the decisions of this court.

THE NATURE OF SOCIAL RULES. Albion W. Small.

Sociology holds that we have passed the boundary between an earlier and a later period in the evolution of rules, the periods of custom and reflection. The two great questions of sociology are, Of what sort have rules been, and of what sort are they to be in the future? Customary rules were the will of the stronger exercised over the weaker. But rules were tempered by consideration of difficulty in enforcing them. The balance of power between many conflicting interests determined the rules of this era of evolution. Today, a new force is at work, a conception of the human lot which is likely to work a Copernican revolution in social controls. The human lot is a concurrence of reciprocal interests, recognized as a categorical imperative of objectivity. Rules are formulations of the indicated function of each interest in the economy of the whole or human lot. A social interest consciousness that judges each interest in reference to the rest is in process of development.

An impartial spectator is an impossibility. The method is to take the judgments of experts and test them by appeal to fact,

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that is to say, by appeal to the part that the interest concerned plays in promoting the whole social process, whatever the latter may turn out to be. "There are no rights, except rights of way, in performing social functions." The evolving ideal is that of a community of reciprocating functions.

THE FORMAL RELATION OF RULE AND DISCRETION. Albert Kocourek.*

Discretion is a permanent characteristic of the law and a lever of legal evolution. It may be said to add to, modify, and even substitute for the law. The courts are thought to apply the law, but specific and direct applications are rare. Even where they occur, controversy and difference of opinion are not eliminated. In the legal syllogism, the law gives only the major premise, while the minor has to be discovered in the great laboratory of litigation.

English and American law is inductive, while continental or Roman law is deductive. The English judge has poorer tools to work with, but greater skill, than the continental judge. Our system tends to a great variety of rules. Sociological jurisprudence would override all rules and abandon concepts. Relative, changing, and living realities, are the subject matter of juristic science. Its method is the method of purpose and teleology. It must consider, not only the quantity and quality, but also the modality of juristic facts.

THE EPISTEMOLOGIC BASIS OF GENERAL RULES. David F. Swenson.

This paper contended that there must be an objective and self-identical body of juristic relations. Plato's eternal and unchanging ideas are reasserted. Meanings remain even when they change, and they admit of comparison. Logic discriminates alternative meanings and banishes lack of clearnesss. Custom, association, and the natural history of meanings, cannot be substituted for clearness and distinctness. Individual psychology alone does not account for perfect meanings. When the contents of juristic knowledge appear they are objective and independent. But what are the actual conditions under which rules are to be applied? Can their application be said to describe

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a syllogism? No. No fact of juristic significance comes so labeled as to make its subsumption a mechanical process. That involves creative imagination based on a knowledge of the code and an understanding of the facts of the case. Only the trivial elements of the process are controlled by the abstract laws of logic. The judge's social philosophy, ethics, and knowledge of human nature, enter into the process, as also do his human sympathies. Two reasons are offered for the statement that the application of law is an act of creative imagination. First, no *completely* elaborated code is possible. Any actual system of rules is full of gaps and inadequate adjustments. Secondly, it is never possible completely to express our intentions in rules of law. Hence, rules of interpretation are necessary, and just rules of interpretation do not make the law, any more than gravitation makes the stone break the window. The limitations of human reason make these rules of interpretation necessary. Deciding cases on their merits is a confession of difficulty in subsuming the case under the proper rule.

THE SUBSTITUTION OF RULE FOR DISCRETION IN PUBLIC LAW. Ernst Freund.

The recent legislative tendency to delegate quasi-legislative powers to administrative authorities is believed by many to be a shifting from judicial rule to administrative discretion. In reality it is a change from very general legislative requirements, judicially administered with considerable latitude of jury verdicts, to specific requirements which furnish a much more definite rule for the administration of justice. The change is therefore from discretion to rule and not vice versa.

The real significance of the new movement is that the specific requirements emanate from administrative authorities rather than from the legislature. The advantage commonly predicated for this transfer is its greater flexibility. This, however, may as easily be a disadvantage as a benefit. The real advantage of the new policy is that it permits the application to rule-making of processes which in course of time should substitute principle for mere discretion. If it will accomplish this it will remedy one of the principal defects of our public law.

Discretionary powers have not been and are not unknown in our administration. All discretion in administration, however,

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is an anomaly and the modern tendency is to reduce it to a minimum. In the history of English government the objection to discretionary powers has been overcome to a certain extent by giving the entire administration a very strong judicial cast, a characteristic of English administration which broke down only in the nineteenth century. This clearly tended to limit discretion by the observance of precedent and therefore to reduce it to principle. Where the application of principle seemed impracticable, the policy of the English law appears to have been to vest powers in the organs of self-government, whether jury, justice of the peace, or locally elective officers, and, in like manner, that function of government which seemed to be incapable of being subordinated to law, the variable element of policy, was eventually entirely withdrawn from the Crown and invested in the people's representatives.

In America the development of administrative organization has, on the whole, been away from the strong judicial complexion which it had in England, and moreover the entire constitution of the state was placed on a self-governmental, non-professional basis. As in England all acts of government involving free and uncontrolled initiative were vested in legislative bodies and the discretion exercised in such functions is commonly termed "legislative discretion." In America, moreover, these legislative bodies achieved an independence from executive guidance which was never equalled in England, let alone in other European countries.

The history of discretionary powers in America has moved in a vicious circle: they were first placed upon an entirely self-governmental basis and the self-governmental character of the authority was then pretty sure to prevent the growth of anything like system or principle in the exercise of the discretionary power. Past experience has clearly demonstrated the incapacity of the formerly prevailing type of administrative organization to develop anything like rule or system in the exercise of powers, and the same has been true, in perhaps even a more marked degree, of legislative action.

It must of course be conceded that there is in the function of legislation a very much larger legitimate field for the exercise of free and variable discretion. But we have failed to recognize that even in legislation there is much that ought to be controlled by system and principle. True, we have had constitutional

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limitations enforced by the courts, but these have insisted upon the minimum and not upon the practicable maximum of order and system in legislative action.

Clearly the greatest problem of American public law is how to assert against unrestrained legislative discretion the legitimate claims of principle. One way would be the according of a larger and perhaps a controlling influence to the initiative of the executive power. This has been the burden of the recommendations of President Taft's Commission for Economy and Efficiency in the important field of public finance. (It is not impossible that the progressive democratization of our institutions will shift the balance of legislative power from the legislature to the executive. Up to the present, however, the actual advance in that direction has been relatively slight.)

The delegation of legislative power to administrative commissions is, however, another step in the same direction. The type of administrative action contemplated for the exercise of these delegated powers is clearly different from the old type of American administration. The procedural safeguards are more conspicuous and there is every reason to expect that the exercise of these powers will tend more and more to be quasi-judicial. The forms of judicial action will inject into the subordinate legislation produced by commissions the elements of principle in so far as it is amenable to principle, and the great value of the new development will be to help to determine the legitimate provinces of rule and discretion in our public law.

DISCUSSION OF THE ABOVE PAPER. W. F. Dodd.

The discretion conferred upon administrative bodies is of two types: (1) a discretion to make rules, and (2) a discretion to act in individual cases. The first is distinctly a legislative discretion, the second a judicial discretion. As to the first type, the issue is that as to whether the administrative body is more competent to make the rule than is the legislature. Legislatures to an increasing extent enact laws general in form and leave to administrative bodies the making of rules to carry out the legislative policy in detail. This policy has very definitely been adopted with respect to health regulation, railroad rates, and (more recently) the regulation of conditions under which laborers shall work.

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Both the legislative and administrative body are making rules, but the rule of the administrative body is made upon expert knowledge, after investigation, and ordinarily after a hearing. As to matters requiring detailed and expert knowledge, the commission's rule is therefore apt to be much more satisfactory than is the legislative rule made ordinarily without careful investigation and without a hearing of the parties.

(2) The second type of administrative discretion is judicial or quasi-judicial—*e. g.*, the power to act in individual cases in revoking licenses, excluding or deporting aliens, or determining the compensation to be allowed to a workman in a particular case. (In the exercise of such powers, there comes a square issue between administrative justice and judicial justice, at least in those cases where the administrative determination is not subject to judicial review.) Administrative determinations in such cases are not merely arbitrary but are controlled by rules, and may be more just than judicial determinations would be, because based upon better technical knowledge. A mere arbitrary discretion of a subordinate administrative official should not exist, but properly safeguarded administrative tribunals are perhaps as apt to render justice as are judicial tribunals. Such administrative tribunals will naturally develop precedents and act in many respects as do judicial tribunals. It is for this reason that a review of decisions of an inferior administrative body or officer by a superior administrative tribunal may often prove as satisfactory as a judicial review.

The real danger of abuse of administrative discretion in individual cases comes (1) where the power of final determination is left to the uncontrolled discretion of an administrative officer who must act promptly as in granting or refusing a license to parade the streets, and (2) where a decision by an administrative officer is subject to what is perhaps a perfunctory review by higher officials, on appeal, as seems to be the case under the Chinese exclusion laws, and is conclusive as to matters of fact.

Discussion of the Paper Read by Mr. Crownhart on the Industrial Commission of Wisconsin. A. B. Hall.

The Industrial Commission of the State of Wisconsin was called into existence by certain definite needs which the old judicial and legislative machinery of the state was incompetent to

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meet. The commission enjoys two powers, a quasi-legislative and a quasi-judicial power. It can decide controversies under the Workmen's Compensation Act and it can also enact new rules and orders for the better enforcement and execution of the principles of that act. In performing both of these functions it has the authority to send out, on its own initiative, experts to examine all the evidence in the case, to study up on the available material and to hold consultation with all those interested or affected by their adjudications or rules. Their jurisdiction is limited to a narrow class of cases and they are given a full corps of experts to conduct special investigations for them, whenever they may deem it necessary.

Compare the facilities of the Industrial Commission with those of our Judicial System for solving the same problems. Our courts are clothed with two forms of discretion, judicial and legislative. Judicial discretion is the discretion involved in applying the rules of law to definite statements of facts; their legislative discretion consists in their authority to lay down new principles of law where cases come before them for adjudication, requiring judicial action, but for which there are no principles of established law applicable.

It must be remembered that the courts are called upon to pass upon every conceivable kind of question, and to pass upon them rapidly, for they are generally behind in their calendars and overworked, and that in passing upon the most technical of questions, they must rely upon the legal evidence voluntarily presented by the litigants and have no authority or right to make a special investigation of their own, nor have they a corps of experts whom they can authorize to make such an investigation for them. In addition to this, they are further handicapped by the realization that any new principles they lay down are retroactive in character and that, having once been laid down, they cannot be changed except by the formal action of the legislature. Viewed from this standpoint, the wonder is that our courts have been as efficient as they have been. The movement represented by the organization of the Industrial Commission, is not a movement away from the principles of law to abstract conceptions of justice, but is a movement to change the judicial and legislative machinery of the state to meet certain technical and complex problems requiring the use of skilled experts and minute divisions of labor impossible under the old system.

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An examination of the proceedings of the commissions established, evidences the fact that, in so far as they exercise judicial discretion, they exercise it according to established principle and not according to the whim and caprice of the adjudicators. While not bound by the rule of *stare decisis*, they consider themselves bound to harmonize their decision until they see fit to formally adopt a new policy in the exercise of their legislative powers. It is simply a process of specializing the law-making and law-applying functions, within certain limits of judicial control, to a definite and technical class of problems requiring for their just solution the aid and investigation of trained experts. The success of the commission is due to these factors; it is not due to the superiority of the commissioners over the judges, either as to viewpoint, training, sympathies or intellect. The commissions are asked to solvè problems after careful and elaborate investigations, and, aided by such experts as they may desire, which the courts were asked to solve in rapid succession with no time or opportunity for specialization, and without the aid of expert advice and investigation. As was to be expected technical methods, expert service, and a division of labor have proven superior in the solution of technical problems, to the old judicial methods, with no technique save that of law, no specialization for special kinds of cases, no division of labor, no expert nvestigators, and no adequate time for the performance of their duties.

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BOOK REVIEWS.

PROGRESSIVISM—AND AFTER. By William English Walling. New York: The Macmillan Co., 1914. Pp. xxxiv, 406.

A direct passage from capitalism to socialism has been a doctrine accepted by most socialist leaders. Not the least significant feature of Mr. Walling's book is repudiation of the dominant opinion and a substitution therefor of a view that there are four stages of social evolution: the first period, the rule of large capital and private monopoly, is nearly extinct; the second period, now present, is State Capitalism; the third period is State Socialism, rapidly advancing; the fourth period is Socialism proper.

The intervening stations between Simon-pure capitalism and genuine socialism are carefully distinguished. The center of attack is the period of State Capitalism or Progressivism, the age in which the small capitalist flourishes. The forces which have initiated and sustained the economic and political supremacy of the small business and professional men are recounted, the probable antecedents of State Socialism are detailed, and the anticipations of genuine Socialism in both eras are finally suggested. Although the author insists that his is a genetic way of approach, he contends that the several stages of societary evolution growing one out of the other are different in kind, not merely in degree (p. xi).

Since more than half the text discusses the value and limitations of the progressive movement, it is essential to understand what the author conceives to be the past and future of Progressivism. The reaction against plutocracy was started by farmers, shopkeepers, and humbler grades of capitalists. President Wilson is dominantly a champion of those who hope to set up in business for themselves; his solicitude is for "small but hopeful businesses." The logic of economic transformation has forced him, along with Roosevelt, Churchill, and Lloyd-George, to advocate a partial collectivism, primarily in the interests of the middle class. Old-age pensions and minimum wages may be secured for the wage-earning groups, but most of the ultimate advantage goes to the small capitalist and his allies. Satisfied, efficient, scientific labor is now indispensable; to superior organi-

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zation as well as to a greater total of capital is due the victory of the small producer over big business. Whenever big business cannot be competed with or curbed, nationalization of the monopolistic industry is demanded. For this reason railroads, mines, and other utilities are bound to be nationalized.

Progressivism does not touch the fundamental problem of equitable distribution of the national income among the several producing groups. Wages of unskilled labor undoubtedly advance in consequeuce of progressive legislation. Notwithstanding, the *just proportion* of the benefit is not guaranteed or seriously contempleted by a government of small capitalists.

On the banner of the progressives is written, Equal Opportunity. This wholesome American ideal is embodied in legislation prohibiting gross economic privileges and monopolies, taxing incomes and inheritances, and securing universal suffrage. Political democracy is attained, and a greater degree of industrial democracy. Walling recognizes the permanent and positive value of these achievements. Nevertheless, he argues that equality of education, irrespective of social station, is not the aim of the progressives. The chapters (v, xvii) dealing with popular education are noteworthy. Claiming that the middle and upper classes only can give their children the training requisite for secure, decent positions, the writer inveighs against vocational education based on the notion of a fixed status for the "lowest" class. He says:

"It may be that the economic positions in society occupied by men and women who have now reached maturity are already to some degree distributed according to relative fitness, and that, even though this fitness is due, not to native superiority, but to unfair advantages and unequal opportunity, it may be that a general change for the better is impossible until a new generation has appeared. But there is no reason (except the opposition of parents who want privileges for their own children) why every child in every civilized country should not be guaranteed by the community an equal opportunity in public education and an equal chance for promotion in the public or semi-public service (which soon promises to employ a large part, if not the majority of the community). No believer in equal opportunity or democracy can see any reason for continuing a single day the process of putting the burdens of the future society beforehand on the children of the present generation of wage-earners, children as

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yet of entirely unknown and undeveloped powers and not yet irremediably shaped to serve in the subordinate roles filled by their parents.

"Equal opportunity for children, indeed, promises to be the first principle likely to secure general acceptance which passes beyond the program of the 'progressives,' *i.e.*, the State Capitalists, or even that of the State Socialists" (pp. 106–107).

State Capitalism, however, fosters educated, scientifically managed adult workmen, both in private and public employment. In Australia, England, and the United States is foreshadowed the coming balance of power of the "aristocrats of labor." State Socialism means the domination, economic and political, of government employees and the skilled, protected aristocracy of labor. The American Federation of Labor; Macdonald, Webb, the Fabians of England; Hillquit, Berger, and many Socialists in America; Kautsky, Bebel, and the majority of the German party are reckoned among the "laborites." Chapters x–xv and six sections of the appendix analyze the currents of State Socialism. Widespread amelioration and the democratization of income, leisure, and education will characterize this period, but the flaw consists in the fact that the unskilled are still outsiders; privilege, discrimination, and restriction of full expression persist. Laborites seek to secure the favor and votes of reactionary parties in order to keep the balance of power which the unskilled masses hope to attain. Gradually they compromise their principles; even the noble and once cherished doctrine of the international unity of the working classes is abandoned. Evidence is adduced showing that on such fundamental issues as militarism, immigration, and exploitation of colonial laborers the laborites of Germany, England, and America have backed down. Hence a "fatal separation between theory and tactics" in the opportunistic politics of State Socialists.

The most conspicuous trait of State Socialism, therefore, is the struggle within the working class. Aristocracy of labor fights the claims of Industrial Workers and Syndicalists. In dealing with the transition to Socialism, Mr. Walling avers that the struggle will become increasingly unsettling and costly. For the rising intelligence of the masses will render them more adept in hindering industry. Scientific management is balanced by scientific sabotage! Skilled labor opposes sabotage and mass

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strikes, yet for years, the author remarks, it has pursued a policy of restricting output and "soldiering on the job." Since government listens to its master's voice, skilled labor, the lower strata must fight on the economic field with sabotage and mass strikes.

What, then, are the distinctive traits of real socialism? The answer is: abolition of classes founded on economic position, income determined by serviceable contribution, thorough-going equality of opportunity, especially with regard to education (chapters xvi–xvii). Like other observers, Walling notes a recent tendency away from educational democracy, and he predicts that "if this right of higher education is given to a sufficient number of the people's children and if the large majority of occupations are under the civil service, then, indeed, not only the present ruling classes, but every ruling class and every privilege, would disappear within the present generation.

"And with this 'most radical of revolutions' in the distribution of education would come an equally radical change in its nature and quality, and so in the whole of our culture" (p. 315).

Candid admission of the respects in which the doctrines of Marx and succeeding socialists have not been able to fit all the facts is an admirable part of the empirical method espoused by the writer. Some of the changes may be marked: (1) Marx thought that private monopolies would increase, wages fall to a subsistence level, and the middle class be swallowed up. The prophecy has not proved true. Income has advanced, monopolies have been nationalized, and the balance of power has fallen to the middle class. (2) The founders of socialist economics taught the doctrine of the solidarity of capital pitted against the solidarity of labor. Some capitalists have turned out "good," and there has been a split within the working class due to level of income and opportunity. (3) The followers of Marx asserted that only the workingmen themselves would "set limits to the tyrannical usurpations of capital." The achievement of progressives without evident socialist pressure is ample rebuttal. (4) The zeal of early socialists lead them to deny that group consciousness of any kind could exist during Socialism. Walling says there will be groups or classes but not a hierarchy of ruling ones. In response to Roosevelt's trite dictum, "We are not Socialists, for we do not believe in class-consciousness," it is claimed that socialists may make the same plea. "We believe that the governed should be conscious of the fact that they are

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governed by class-conscious rulers, who rule in their own interests and not in the interests of society. It is this class-conscious, class-ruled society that Socialists aim to abolish" (p. 321).

As to method, the author explains that he employs the genetic, evolutionary procedure characteristic of the prospective, constructive science of today. The new method is pragmatic, "beginning with an hypothesis and a plan for work" (p. xxi). "We are neither looking from the past into the present, nor from the present into the future, *but from the future into the present* (and chiefly perhaps as an exercise of the same faculty, *from the present into the past*)."

To the student of the logic of societary hypotheses the following is informing:

"In social science we are not in the least concerned then, with mere historical analogies, or with 'laws' that project or extend the past into the future, but are occupied wholly with projecting on the present a series of scientific hypotheses based upon what seems to be the probable future stages of social evolution. Pretending to no dogmatic finality, and leaving the field open to other hypotheses, to be similarly tested, the only justification of this method is its results"(p. xxii). The well-known forecast of economic and political mutations in America made by James Bryce in 1884 is referred to as an example of verified hypothesis.

Mr. Walling's mastery of the intricacies of contemporary politics is amazing, and the endeavor to disentangle and rearrange the threads of present and future development is bold, clarifying, and laudable, even if strict adherence to the pragmatic method may soon call for renewed hypotheses. How much, for instance, will the outbreak of an international war shift the social panorama?

University of Cincinnati. E. L. TALBERT.

INTERMEDIATE TYPES AMONG PRIMITIVE FOLK: A Study in Social Evolution. By Edward Carpenter. London: Allen & Co., 1914. Pp. 185.

This is a perfect example of the scientific and speculative discussion of a subject which only of late years has met with anything that can be called scientific treatment at all. The

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"intermediate types" discussed are the types which, as regards psychology of sex, may be called intermediate between man and woman. This expression is admitted not to be quite exact; for the sake of convenience, it is made to include types on the one side "ultra-virile" and on the other side ultra-feminine. The more effeminate type of intermediate men, the author concludes, among primitive peoples turned from the ordinary male occupations to religion, being found especially apt for divination, clairvoyance, ecstasy and so forth. The more masculine type founded such institutions as those of military comradeship among the Dorian Greeks. In both cases, he suggests the type might possibly fulfil a positive and useful function. Simply to enter into a tirade against so widespread a human tendency, easy as it might be, would not be the method either of common sense or of science.

In my opinion, the scientific part of Mr. Carpenter's thesis is right. The association of these institutions, often rather elaborately systematized, is with relatively primitive peoples. They are archaisms, remains of early undifferentiated sex-feeling. S. Ivan Block (whom Mr. Carpenter quotes) has arrived at a somewhat similar conclusion; though he is more emphatic about the "dysteleological" character of the phenomenon, and speculates less about the value they may once have had. What this value may have been, it seems a very speculative matter to determine. The phenomena themselves are puzzling; and whether "magic," which Mr. Carpenter is inclined to associate with them, was ever anything more than a phase of error, is a disputed question. That science grew out of it rather than out of normal experience does not seem the most probable theory. With the first great elaboration of science—that of Egypt and Western Asia—the wandering unbalanced types of seers and ecstatics had nothing to do: it was carried on by castes, therefore by persons on the whole presumably normal. The intermediate character often assigned to the priest—the less strongly marked masculine type—does not necessarily indicate abnormal sexual psychology. Comte certainly had no thought of this when in his ideal polity he prescribed for priests a dress intermediate between that of men and women.

If, on the lines laid down by Comte, we turn to the next step taken in advance in intellectual things, the transition from the "conservative polytheism" of the East to the progressive, essen-

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tially military, polytheism of Greece, we do not find that the Dorians did much for progress. And the Ionians, among whom philosophy arose, and who also contributed far more to literature and art, had not the Dorian military institution. The παιδεραστία of historic Greece—to which, as Mr. Carpenter observes with recent writers, injustice may often be done by a coarse interpretation—was first imitated from the Dorians, and, in the later period of classical antiquity, had already fallen under the modern taboo. This, he suggests, may have been accompanied by some decline in martial spirit; but, as he is quite clearly aware, the code of ethics that came to be accepted in the Roman Empire concerning normal and abnormal sexual relations was consciously placed in opposition as Western to the absence of discrimination among most Eastern peoples: and the Easterns were certainly not more martial. He also writes that an institution of comradeship similar to that of the Dorians can be traced among the Samurai of mediæval Japan, but that the mention of it has now fallen under a taboo similar to that which fell on the corresponding Greek institution in the later period. Here the change of tone has evidently not been a mark of military decadence. We seem to be confronted with a "law of progress," from archaic to modern ethics, both terms being taken in a very generalized sense. What the evolutionary point of view suggests is that the types described, as both sex and individuality become more differentiated, tend to obsolescence.

I quite agree with the author, however, that not all that is "modern" is necessarily gain. As regards speech, for example, the ideal to look forward to is not more and more reticence, but, as far as we can achieve it, a return to the simplicity of innocence. And, when we speak of "dysteleology," it is very difficult to be sure of our ground. The genius of the race rules in extraordinary ways. Let us take the most individualized normal type of love so far evolved—the modern "romantic" love ending in marriage. This, as an emotion, seems at first sight to need no explanation. Schopenhauer, while treating it as in a sense illusory for the individual, regards it as for the race pre-eminently teleological. Yet in what a devious way it came to exist! In the history of Europe it was partly created by literature after two phases, first physically and then socially "dysteleological," but in compensation conceived as in their ideal purity only imaginative, had found successive expression in the earlier literature out of

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which the third sprang. Clearly the example set in the present book is the best to follow: neither to denounce nor to lament, but to try to understand.

T. WHITTAKER.

London, England.

THE RATIONALE OF PUNISHMENT. By Heinrich Oppenheimer. London: University of London Press, 1913. Pp. 327.

This is the first volume of a series of monographs on sociology under the editorial direction of L. T. Hobhouse and E. A. Westermarck and the thoroughness of the treatment will bring no discredit on the names of these eminent authorities. It is perhaps the fullest discussion in English of the origin and the theoretical justification of punishment.

In the first of the two books into which the work is divided the question of the origin of punishment receives very full treatment. Four current views are examined, namely: private vengeance, social vengeance, the will of the ruler, and domestic discipline, and all are found to be inadequate to account for the facts. A historical inquiry into the origin of punitive justice leads to the view that "innumerable factors have helped to erect upon meagre foundations the structure of criminal jurisprudence," but that three of them have exercised the most decisive influence, which are, the evolution of religion, the rise of kingship, and the institution of peace.

While the author recognizes that in certain "low" tribes there is no punishment, he unfortunately does not see the importance of this fact (p. 68). Likewise he admits that mob law is different from punishment, but he fails to make the connection between these facts, nor does he attempt any theory of the manner in which the "low" tribes passed into a punishing economy.

The general position is that punishment is utilitarian and that the customs arose as intelligent solutions to felt needs on the part of the community. The fear of the people in the tribe and the desire to protect themselves from dangers, particularly supernatural dangers, led them to the invention of punishment as a satisfactory solution to a difficult problem. Even the punishment of sorcery is held to be a utilitarian matter, expiatory in part, but essentially a means to secure certain definite ends.

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It is in this rather extreme intellectualism and in the lack of recognition of the importance of instinctive reactions, and impulses that are not reasoned out, and the consequent origin of customs without rational conscious justification, that the social psychologist would find most objection to this portion of the work.

In the second book of the volume, there is a very full discussion of the different theories of punishment which are analyzed into ten different types, besides the "true view" of the author. Five of these are called transcendental, because they rest upon the supposition that there is a transcendental justice which is abstract and real and which requires measures to be taken for its preservation. These are set forth as follows: The theological theory, attributed to Joseph de Maistre; the expiatory, which is assigned to Joseph Kohler; the moral necessity of Kant; the logical necessity theory of Hegel; and the æsthetic theory of Herbart. A full statement of the arguments for and against each of these is given and all are held to be untenable since there is no warrant for believing that abstract justice has any existence.

Determent, reformation, disablement, and prevention are discussed under the head of political theories in which punishment is held to be a means to an end and not an end in itself, as in the transcendental theories. There is also a chapter on the modern criminological theories.

The true function of punishment is held to be the prevention of crime by frightening the citizens who are contemplating crime and by the educational effect of the criminal law. A thoroughgoing hedonism underlies the discussion and an algebraic formula appears in which the deterrent effect of the punishment is set forth as the mathematical product of the severity of the penalty by the certainty of its infliction. Capital punishment is held to be a valuable protection and opposition to it is dismissed as sickly sentimentalism.

The value of the work does not lie in the strength of its conclusions but in the comprehensive manner in which the field has been covered and the literature discussed. While there is an excellent bibliography, the omission of some important titles is noticeable.

ELLSWORTH FARIS.

University of Chicago.

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PHYSICAL BASES OF CRIME: A Symposium. American Academy of Medicine Press, Easton, Pa., 1914. Pp. 188.

This volume consists of papers that formed the bases of discussion at the annual meeting of the American Academy of Medicine, held at Minneapolis in June, 1913. Most of the nineteen papers comprising the volume attack the problem of the physical basis of crime from some angle in the medical field. The others do not stray far from this purpose.

One of the most instructive papers is that by Dr. Edith R. Spaulding of the Reformatory for Women, South Framingham, Mass., and Dr. William Healy of the Psychopathic Institute of Chicago. The work on which it is based was done at the Juvenile Psychopathic Institute, Chicago, and consists of the study of one thousand cases, the problem being to discover what evidence, if any, there is of the existence of hereditary criminalistic traits as such, that is, criminalistic traits not having a physical basis in some defect, malformation, disease, etc. The authors declare that inheritance as a factor in criminality must be studied under two heads, (1) the direct inheritance of criminalistic traits in otherwise normal individuals, and (2) the indirect criminalistic tendencies through such hereditable factors as epilepsy, insanity, feeble-mindedness and the like. Working with a thousand cases they conclude that they find no evidence of the existence of crininalistic traits as such. There is much evidence of *indirect* inheritance through mental and physical defects. Some of these defects, while not criminalistic in themselves, will in a favorable environment develop into criminalistic factors. The idea that there exist bare criminalistic traits apart from definite discoverable mental, physical, or environmental factors, the authors say, is an unsubstantiated metaphysical hypothesis.

Quite in line with the theme of the paper just mentioned is one by Doctor Goddard of the Vineland Training School, on Relation of Feeble-mindedness to Crime, which points out the close relationship between the two. Doctor Goddard suggests that the best means of dealing with the feeble-minded is to discover them in the school period, and then to attempt to control them according to their needs; much criminality can be avoided in this way.

J. KANTOR.

University of Chicago.

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THE PHILOSOPHY OF RELIGION. By George Galloway, D.Phil., D.D. Edinburgh: T. & T. Clark, 1914. Pp. xii, 602. International Theological Library.

Dr. Galloway's name is already well known to students of religious philosophy through his earlier works, *Studies in the Philosophy of Religion*, and *The Principles of Religious Development*. In the present volume he has undertaken the task of giving a systematic treatment of the whole field. The result is a book which may be called, not in any disparagement but in the large German sense of the words, a text-book. It is likely to serve in that capacity for some time to come, since the author has, in addition to wide knowledge, a style which, if not very distinguished, has the supreme merit of clearness. There is never any doubt as to what Dr. Galloway means.

When we compare this book with those of the previous generation; with Martineau or the Cairds, for example, we become conscious of a change of spirit. It might be expressed by saying that the philosophy of religion has become more objective. The whole problem is not now comprised in the development of a speculative theory of religion; the philosopher feels himself compelled to approach the central problem of validity through an independent study of the empirical data. Thus Dr. Galloway devotes at least half his book to the discussion of the historical development of religion and the psychology of the religious consciousness. This increased "objectivity" undoubtedly involves a certain loss of artistic unity, and it also makes very large demands on the learning of a writer; as Dr. Galloway modestly remarks, "it is too much to expect that the religious philosopher can personally traverse this broad territory and make himself acquainted with all its various features." Yet this new attitude has obvious compensations from the point of view of the reader; we may learn with confidence facts and tendencies from a writer whose philosophical opinions may be unacceptable.

Space compels me to pass over Dr. Galloway's account of the development of religion with the summary statement that it is eminently clear and fair. He does not maintain that a survey of the course of religious evolution can be made a logical ground for holding the validity of religious belief. After the closest study of the facts it may still be possible to regard them as the working out of a few "pathetic fallacies." Nevertheless, he

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holds, for one who comes to the study of the facts with a faith based on a personal affirmation they may be a support and confirmation. In dealing with the nature of the religious consciousness Dr. Galloway agrees with those theologians, of whom Dr. Caldecott is a distinguished example, who, while disclaiming the one-sidedness of Schleiermacher, maintain that the central element in religious experience is to be found in feeling. And this may be admitted without prejudice to the "personalist" view which Dr. Galloway would also adopt, that religious faith is an affair of the whole personality; for will and idea are involved in the advance of feeling to greater definiteness and content.

No claim is made by our author that any existing form of Christianity is the culmination of religious evolution or the "absolute" religion. He is content to urge that Christianity, more adequately than any of its rivals, answers the needs of the religious consciousness. Three points of superiority may fairly be alleged: First, the religious relation is conceived as personal; secondly, the idea of God is definitely and completely ethical; thirdly, the ideal of the Kingdom of God reconciles the individual and the social aspects of religious aspiration. I think I do not misinterpret Dr. Galloway by saying that he looks for a universal spiritual religion which shall be a development and a simplification of historical Christianity.

Probably most readers will turn with greatest interest to the author's philosophical defence of Theism and his attempt to construct a Theistic cosmology. Dr. Galloway evidently decided that loyalty to his readers required him to go once more through the traditional "proofs," though it is clear that he thinks the time has come when they should be allowed to sink into the background. He does not pretend that the existence of God can be made the conclusion of a rigidly cogent line of reasoning. He does maintain however that a probable argument of great force, which will support the venture of a personal faith, can be developed from two standpoints. Along metaphysical lines we are led to complete our thought by the conception of a World-Ground; through reflection on the implications of the moral consciousness we are led to the idea of a Supreme Value, who is at least personal. When Dr. Galloway comes to work out his view of the universe we find clear indications that he has felt the influence of the reaction against Absolutism. With William James he protests against the "Block Universe;" with the New Realists

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he denies that Idealism can explain the concrete facts of experience. I think that he does not always do justice to the views of Absolute Idealism; probably Mr. Bradley's recent volume of essays was published too late to be made use of. Dr. Galloway treats, for example, the contrast between Reality and appearance as if it were admittedly a contrast between Reality and illusion. It is quite an arguable position that this is in truth the outcome of Mr. Bradley's philosophy, but it is hardly fair to ignore altogether the doctrine of degrees of reality. Dr. Galloway's own theory is a pluralistic Theism not unlike that which Dr. James Ward has suggested in his *Realm of Ends*. The universe, on this view, contains created monads in various levels of development. These monads are distinct from, and, in a limited degree, independent of the Supreme Monad. Through an undetermined process of evolution they are working towards a common End. Such in the main is Dr. Galloway's view, but he has felt the difficulties of explaining interaction so deeply that he has been constrained to add to the theory. He asks to be allowed to postulate a created medium within which the monads exist, and he suggests that this medium is psychical in character though below the level of the least developed monad. "Reduced to its lowest terms the order of existence consists of simple monads interacting within a common medium or environment, the whole forming a system of which an ultimate will is the ever present Ground." Dr. Galloway puts forward this view in a tentative manner and it will deserve careful scrutiny. At first sight some obvious difficulties suggest themselves. It is not clear that the problem of interaction will be made easier by introducing another factor which must itself enter into relations. Again, Dr. Galloway himself rightly protests against the use of the words "spirit" and "experience" as if they had any meaning apart from personality and subject. Might not much the same considerations be brought against a psychical reality which is not attached to any conscious centre? I have an uneasy feeling that if we grant Dr. Galloway his monads and his medium we might find that we could do very well without his God.

One further perplexity may perhaps be briefly noticed. It is obvious that for Dr. Galloway's theory change and progress are ultimately real. Yet he maintains most strongly and justly that the End of evolution cannot be conceived as existing within the temporal order. The Temporal Order thus points beyond it-

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self to a Transcendent Order. We learn however that the Transcendent Order itself is subject to change and movement, "for there could be no consciousness apart from changing psychical states." Thus we should be carried on to think of an End of the Transcendent Order not contained in that order, and so to an indefinite regress of orders of reality each with its End in a higher plane of being. What is the End of all orders of reality? Admitting that the goal of evolution cannot be conceived as a part of the evolutionary process itself, the Absolute Idealist may plausibly assert that he has the only final interpretation of this fact in his conception of a Reality which abides in changeless perfection.

I am conscious that the limits of a review have not allowed me to do anything like justice to this important book. In particular some notice should have been given to the excellent sections which deal with the nature of religious doctrines and with revelation. An admirable feature of Dr. Galloway's treatment is his emphasis on the part played by great creative personalities. In conclusion, it may not be impertinent to say that this book leaves the impression of a mind which is still living and developing. It is to be hoped, for the sake both of theology and philosophy, that, either in his present sphere or in some academic position, its author will find leisure to carry his thought still further.

W. R. Matthews.

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Social Reforms: As related to realities and delusions; an examination of the increase and distribution of wealth, from 1801 to 1910. By W. H. Mallock. London: John Murray, 1912. Pp. xii, 391.

This is a sad, almost a prehistoric book. The word "reformer" is used throughout as a term of reproach, and all modern "social reform" is regarded with frank hostility. Mr. Mallock objects even to the discrimination, for purpose of income tax, between earned and unearned income (p. 298). "Reformers," he thinks, are "a supersensitive class . . . affected by the spectacle of suffering more acutely than they would be by the experience of it" (p. 4).

The main thesis of this book is that the poor are not really poor, nor the rich really rich; there is really no great inequality

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of incomes in Britain. Mr. Mallock admits that these important facts are not generally known, but, after all, "the process of translating a popular and not unnatural delusion into a systematized body of statistical and historical errors, and the imposition of this on the minds of multitudes as the sole basis of any true social policy, has been the work of professional reformers for more than sixty years" (p. 335).

But Mr. Mallock's own statistical exercises which fill the greater part of the book cannot be taken very seriously. He frequently refers to a Return issued in 1801, in connection with Pitt's income tax and this document figures prominently in an attempt to prove that the distribution of income was far more unequal a hundred years ago than now.

Mr. Mallock believes that the document in question had wholly escaped the attention of economists until he discovered it one afternoon in the Cambridge University Library. A wider course of reading in modern statistical work would have saved him from this misapprehension. The document is, of course, perfectly well known to all serious students of Mr. Mallock's subject, but it is generally admitted to be so meager and untrustworthy, as to have practically no scientific value. Mistakes of this kind are, however, in the circumstances natural enough. It is rash, for one whose past achievements have been mainly literary, to take up statistics late in life in order to dispute the conclusions, not merely of "professional reformers," but of dispassionate statisticians such as Dr. Bowley, who have made these matters the study of a lifetime.

But much the most remarkable part of Mr. Mallock's book is his handling of the figures which relate to the distribution of income at the present day. He defines "the poor," conveniently enough, as those whose incomes are below £160 a year, that is to say below the income tax limit. He then argues (pp. 338 *et. seq.*) that the average "net income" of the poor is £150 a year, and their average "gross income" £170, net income being defined as gross income minus rates, taxes and savings. And this is no slip, as the charitable reader might at first sight suppose, but the climax of a lengthy and elaborate argument!

Mr. Mallock has no difficulty in concluding that social reform is neither necessary in the interests of the poor, nor just to the owners of property. But it is a counsel of conservation, not a counsel of revolt, that the owners of property should set a sober

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example, "by not abusing their legal rights, in order that the substantial integrity of their rights may be maintained" (p. 338).

It is hardly necessary to add that the book contains no constructive proposals. It does contain, however, a labored allusion, in very bad taste, to the recent Marconi controversy (p. 271).

HUGH DALTON.

London, England.

MORAL UND GESELLSCHAFT DES 20. JAHRHUNDERTS. By Fritz Berolzheimer. Munich: 1914. Reinhardt. Pp. viii, 413.

It would be difficult to name any English or American work which corresponds to this brief yet wide-looking survey of moral, legal, political, and social problems by the eminent jurist who is known as the author of a five-volume *System der Rechts und Wirthschaftsphilosophie* besides various single treatises. Works upon morals we have; sociological and economic essays abound; criticisms of the law no longer shock us as *lèse majesté*, and lawyers discuss for audiences of lawyers the specific tasks of legal reform. But what jurist has attempted for the general English-reading public a study of ethical and social problems in which law is treated merely as one means toward the general purpose of securing human values? And what writer, at least in America, combines philosophical interest with knowledge of political, legal, economic, and social conditions so as to bring the whole situation in a commanding form to the attention of both thinkers and men of affairs? It would of course be absurd to imply that the limits of four hundred pages permit thorough treatment of the numerous problems touched upon. But to face the large situation as a whole is an indication of what our students must attempt.

The motive is found in the conviction that material success which is so much in evidence summons the thoughtful to a revision of our standards of valuation. The chief divisions are (1) Overcoming of Materialism, with chapters on general ethical values, and the family; (2) Law and State in their relations to Ethics and Society, with chapters on the nature and efficacy of law, and on sovereignty and freedom in the state; (3) The Society of the Twentieth Century, with chapters upon the new signifi-

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cance of property and the new types of men, women, and children produced by it, and upon the new classes formed and forming. The general method is to employ, so far as possible, historical development to explain existing conditions and to indicate lines of progress.

In details there are differences between German and American conditions. The worst enemy of harmonious and pure family life, Dr. Berolzheimer thinks, is the marriage for money; in America hasty, frivolous marriages would seem to be a more common source of discord. Homosexuality is at least a more publicly observed phenomenon in Berlin, though perhaps no more frequent than in other great cities. Juvenile courts are less advanced in Germany. But fundamental questions—relations of law and ethics, how far law should attempt to control conduct, the nature of punishment, the proper valuation of work and accumulation (monomania for work and business begets monomania of luxury and enjoyment), the effects of the emancipation of women, prostitution, the stratification of society brought about by present industrial conditions, to mention only a few—are common to Europe and America. And, to repeat, more important than the actual doctrines presented is the suggestion that our moral, legal, political, economic, and social questions need to be envisaged as a whole, as well as studied in detail.

J. H. T.

THE HISTORY AND THEORY OF VITALISM. By Hans Driesch, Ph.D., LL.D. Authorized translation by C. K. Ogden. London: Macmillan Co. 1914. Pp. viii, 239.

This translation makes a useful addition to the English literature dealing with Vitalism. The historical section of the work is naturally of considerable value in determining the exact significance of modern vitalistic theory. Those who do not already know a good deal about this theory, however, will probably find the history not long enough. Indeed, it is rather a condensed criticism of relevant doctrines historically advocated than a history, the author's views being stated generally in the briefest fashion and supplemented by a few critical remarks; *e. g.*, five pages only are allotted to Johannes Müller, and three only to Liebig, amounts which clearly do not allow of a very enlightening exposition of the doctrines of these thinkers.

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The theoretical part of the book contains essentially the same matter as is contained in "The Problem of Individuality," though it is arranged differently, and is more complete in the present work. This section has been rewritten for the English edition.

The translation is admirably clear.

BERNARD MUSCIO.

Cambridge, England.

THE FUTURE OF THE WOMEN'S MOVEMENT. By H. M. Swanwick, M.A. With an Introduction by Mrs. Fawcett, LL.D. London: G. Bell & Sons, 1914. Pp. xiv, 208.

It is a pity that this book is one of a series, for a more truthful title would be "A Survey of the Women's Movement" by A Progressive Woman, a bad phrase, but Mrs. Swanwick's own. However, this carping at the title of such a good book would be ungracious, were it not that from time to time the author has remembered she has been asked to become one of a series of prophets, and consequently gives us somewhat dull visions of the lines along which the women's movement will develop. This is to be deplored, partly because prophecy is verbal weaving we all like to do for ourselves, but more especially because Mrs. Swanwick has such an intimate knowledge of the state of affairs here and now, and is capable of such clear and reasoned description, that we regret the pages dealing with the future.

What is it in the women's movement that causes so many men and women to make for it those little daily sacrifices that are infinitely more wearing than one act of great self-denial—to sell papers at street corners, to talk to antagonistic crowds, to walk miles of pavement, to forego holidays? Surely no movement of this century demands and gets such varied services from such varied people. Those who are interested in discovering the nature of this moving force will get an admirable description of it in this book, which is written by a woman whose daily acts of service keep her in touch with the facts of the movement as well as its spirit.

NANCY CATTY.

London, England.

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SPIRITUAL REFORMERS IN THE 16TH AND 17TH CENTURIES. By Rufus M. Jones. London and New York. The Macmillan Co. 1914., Pp. li, 362. Price, $3.00.

Professor Jones, who has written "Quakers in the American Colonies" and "Studies in Mystical Religion," seeks in this volume the sources of the Quaker movement, and finds one line at least of characteristic Quaker ideas in the "Spirituals," and "Latitude Men" of the sixteenth and seventeenth centuries. The main stream of the Reformation found in Luther and Calvin exponents who perhaps went as far as the time could support them. But they made doctrine more important than inner experience. The Spirituals, despite their "enthusiasm," and their symbolism, are extraordinarily modern in their appeals for freedom of conscience, their search for another type of religious experience than the legal schemes of salvation and atonement, and their rejection of any authoritatively formulated inflexible doctrine. Denck, Franck, Schwenckfeld, Coornhert, Weigel, Boehme, Whichcote, and many less-known writers are given a sympathetic interpretation. The work is written from the sources and is a valuable addition to our knowledge of the religious and ethical forces of the period.

J. H. T.

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THE INTERNATIONAL
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JANUARY, 1915.

THE ETHICS OF WAR.

THE HONORABLE BERTRAND RUSSELL, F. C. S.

THE question whether war is ever justified, and if so under what circumstances, is one which has been forcing itself upon the attention of all thoughtful men. On this question I find myself in the somewhat painful position of holding that no single one of the combatants is justified in the present war, while not taking the extreme Tolstoyan view that war is under all circumstances a crime. Opinions on such a subject as war are the outcome of feeling rather than of thought: given a man's emotional temperament, his convictions, both on war in general, and on any particular war which may occur during his lifetime, can be predicted with tolerable certainty. The arguments used will be mere reinforcements to convictions otherwise reached. The fundamental facts in this as in all ethical questions are feelings; all that thought can do is to clarify and systematize the expression of those feelings, and it is such clarifying and systematizing of my own feelings that I wish to attempt in the present article.

I.

The question of the rights and wrongs of a particular war is generally considered from a juridical or quasi-juridical standpoint: so and so broke such and such a treaty, crossed such and such a frontier, committed such and

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such technically unfriendly acts, and therefore by the rules it is permissible to kill as many of his nation as modern armaments render possible. There is a certain unreality, a certain lack of imaginative grasp about this way of viewing matters. It has the advantage, always dearly prized by lazy men, of substituting a formula, at once ambiguous and easily applied, for the vital realization of the consequences of acts. The juridical point of view is in fact an illegitimate transference, to the relations of States, of principles properly applicable to the relation of individuals within a State. Within a State, private war is forbidden, and the disputes of private citizens are settled, not by their own force, but by the force of the police, which, being overwhelming, very seldom needs to be explicitly displayed. It is necessary that there should be rules according to which the police decide who is to be considered in the right in a private dispute. These rules constitute law. The chief gain derived from the law and the police is the abolition of private wars, and this gain is independent of the question whether the law as it stands is the best possible. It is therefore in the public interest that the man who goes against the law should be considered in the wrong, not because of the excellence of the law, but because of the importance of avoiding the resort to force as between individuals within the State.

In the interrelation of States nothing of the same sort exists. There is, it is true, a body of conventions called "international law," and there are innumerable treaties between High Contracting Powers. But the conventions and the treaties differ from anything that could properly be called law by the absence of sanction: there is no police force able or willing to enforce their observance. It follows from this that every nation concludes multitudes of divergent and incompatible treaties, and that, in spite of the high language one sometimes hears, the main purpose of the treaties is in actual fact to afford the sort of pretext which is considered respectable for engaging in war with another Power. A Power is considered unscrupulous when

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it goes to war without previously providing itself with such a pretext—unless indeed its opponent is a small country, in which case it is only to be blamed if that small country happens to be under the protection of some other Great Power. England and Russia may partition Persia immediately after guaranteeing its integrity an independence, because no other Great Power has a recognized interest in Persia, and Persia is one of those small States in regard to which treaty obligations are not considered binding. France and Spain, under a similar guarantee as to Morocco, must not partition it without first compensating Germany, because it is recognized that, until such compensation has been offered and accepted, Germany, though not Morocco, has a legitimate interest in the preservation of that country. All Great Powers having guaranteed the neutrality of Belgium, England has a recognized right to resent its violation—a right which is exercised when it is believed to be to England's interest, and waived when England's interest is not thought to be involved. A treaty is therefore not to be regarded as a contract having the same kind of binding force as belongs to private contracts; it is to be regarded merely as a means of giving notice to rival powers that certain acts may, if the national interest so demand, form one of those reasons for war which are recognized as legitimate. If the faithful observance of treaties were a frequent occurrence, like the observance of contracts, the breach of a treaty might be a real and not merely a formal ground for war, since it would tend to weaken the practice of deciding disputes by agreement rather than by armed force. In the absence of such a practice, however, appeal to treaties is only to be regarded as part of the diplomatic machinery. A nation whose diplomacy has been skilfully conducted will always, when it belies that its interests demand war, be able to find some treaty or agreement bringing its intervention within the rules of the diplomatic game. It is obvious, however, that, so long as treaties are only observed when it is convenient to do so, the rules of the diplomatic game have nothing to do with

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the question whether embarking or participating in a war will or will not be for the good of mankind, and it is this question which has to be decided in considering whether a war is justified or not.

II.

It is necessary, in regard to any war, to consider, not its paper justification in past agreements, but its real justification in the balance of good which it is to bring to mankind. At the beginning of a war each nation, under the influence of what is called patriotism, believes that its own victory is both certain and of great importance to mankind. The praiseworthiness of this belief has become an accepted maxim of common sense: even when war is actually in progress it is held to be natural and right that a citizen of an enemy country should regard the victory of his side as assured and highly desirable. By concentrating attention upon the supposed advantages of the victory of our own side, we become more or less blind to the evils inseparable from war and equally certain whichever side may ultimately prove victorious. Yet so long as these are not fully realized, it is impossible to judge justly whether a war is or is not likely to be beneficial to the human race. Although the theme is trite, it is necessary therefore briefly to remind ourselves what the evils of war really are.

To begin with the most obvious evil: large numbers of young men, the most courageous and the most physically fit in their respective nations, are killed, bringing great sorrow to their friends, loss to the community, and gain only to themselves. Many others are maimed for life, some go mad, and others become nervous wrecks, mere useless and helpless derelicts. Of those who survive many will be brutalized and morally degraded by the fierce business of killing, which, however much it may be the soldier's duty, must shock and often destroy the more humane instincts. As every truthful record of war shows, fear and hate let loose the wild beast in a not inconsiderable proportion of combatants, leading to strange cruelties, which

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must be faced, but not dwelt upon if sanity is to be preserved.

Of the evils of war to the non-combatant population in the regions where fighting occurs, the recent misfortunes of Belgium have afforded an example upon which it is not necessary to enlarge. It *is* necessary, however, to point out that the misfortunes of Belgium do not, as is commonly believed in England, afford a reason in favor of war. Hatred, by a tragic delusion, perpetuates the very evils from which it springs. The sufferings of Belgium are attributed to the Germans and not to war; and thus the very horrors of the war are used to stimulate the desire to increase their area and intensity. Even assuming the utmost humanity compatible with the conduct of military operations, it cannot be doubted that, if the troops of the Allies penetrate into the industrial regions of Germany, the German population will have to suffer a great part of the misfortunes which Germany has inflicted upon Belgium. To men under the influence of hate this thought is a cause of rejoicing, but to men in whom humane feeling is not extinct it shows that our sympathy with Belgium should make us hate war rather than Germany.

The evils which war produces outside the area of military operations are perhaps even more serious, for though less intense they are far more widespread. Passing by the anxiety and sorrow of those whose sons or husbands or brothers are at the front, the extent and consequences of the economic injury inflicted by war are much greater than is usually realized. It is common to speak of economic evils as merely material, and of desire for economic progress as grovelling and uninspired. This view is perhaps natural in well-to-do people, to whom economic progress means setting up a motor car or taking holidays in Scotland instead of at the seaside. But with regard to the poorer classes of society, economic progress is the first condition of many spiritual goods and even often of life itself. An overcrowded family, living in a slum in conditions of filth and immorality, where half the children die

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from ignorance of hygiene and bad sanitation, and the remainder grow up stunted and ignorant—such a family can hardly make progress mentally or spiritually, except through an improvement in its economic condition. And without going to the very bottom of the social scale, economic progress is essential to the possibility of good education, of a tolerable existence for women, and of that breadth and freedom of outlook upon which any solid and national advance must be based. It is not the most oppressed or the most ill-used who make an effective plea for social justice, for some reorganization of society which shall give less to the idler and more to the common man. Throughout the Napoleonic wars, while the landowners of England continually increased their rent-rolls, the mass of the wage-earning population sank into greater and greater destitution. It was only afterwards, during the long peace, that a less unjust distribution began to be possible. It cannot be doubted that the desire on the part of the rich to distract men's minds from the claims of social justice has been more or less unconsciously one of the motives leading to war in modern Europe. Everywhere the well-to-do and the political parties which represent their interests have been the chief agents in stirring up international hatred and in persuading the working man that his real enemy is the foreigner. Thus war, and the fear of war, has a double effect in retarding social progress: it diminishes the resources available for improving the condition of the wage-earning classes, and it distracts men's minds from the need and possibility of general improvement by persuading them that the way to better themselves is to injure their comrades in some other country. It is as a protest against this delusion that international socialism has arisen, and whatever may be thought of socialism as an economic doctrine, its internationalism makes it the sanest force in modern politics, and the only body which has preserved some degree of judgment and humanity in the present chaos.

Of all the evils of war the greatest, in my opinion, is the

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purely spiritual evil: the hatred, the injustice, the repudiation of truth, the artificial conflict, where, if once the blindness of atavistic instincts and the sinister influence of anti-social interests, such as those of armaments with their subservient press, could be overcome, it would be seen that there is a real consonance of interest and essential identity of human nature, and every reason to replace hatred by love. Mr. Norman Angell has well shown how unreal, as applied to the conflicts of civilized States, is the whole vocabulary of international conflict, how illusory are the gains supposed to be obtained by victory, and how fallacious are the injuries which nations, in times of peace, are supposed to inflict upon each other in economic competition. The importance of this thesis lies, not so much in its direct economic application, as in the hope which it affords for the liberation of better spiritual impulses in the relations of different communities. To love our enemies, however desirable, is not easy; and therefore it is well to realize that the enmity springs only from blindness, not from any inexorable physical necessity.

III.

Are there any wars which achieve so much for the good of mankind as to outweigh all the evils we have been considering? I think there have been such wars in the past, but they are not wars of the sort with which our diplomatists are concerned, for which our armies and navies have been prepared, and which are exemplified by the present conflict. For purposes of classification we may roughly distinguish four kinds of wars, though of course in any given case a war is not likely to be quite clearly of any one of the four kinds. With this proviso we may distinguish: (1) Wars of Colonization; (2) Wars of Principle; (3) Wars of Self-defence; (4) Wars of Prestige. Of these four kinds I should say that the first and second are fairly often justified; the third seldom, except against an adversary of inferior civilization; and the fourth, which is the

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sort to which the present war belongs, never. Let us consider these four kinds of war in succession.

By a "war of colonization" I mean a war whose purpose is to drive out the whole population of some territory and replace it by an invading population of a different race. Ancient wars were very largely of this kind, of which we have a good example in the Book of Joshua. In modern times the conflicts of Europeans with American-Indians, Maories, and other aborigines in temperate regions, have been of this kind. Such wars are totally devoid of *technical* justification, and are apt to be more ruthless than any other war. Nevertheless, if we are to judge by results, we cannot regret that such wars have taken place. They have the merit, often quite fallaciously claimed for all wars, of leading in the main to the survival of the fittest, and it is chiefly through such wars that the civilized portion of the world has been extended from the neighborhood of the Mediterranean to the greater part of the earth's surface. The eighteenth century, which liked to praise the virtues of the savage and contrast them with the gilded corruption of courts, nevertheless had no scruple in thrusting the noble savage out from his North American hunting grounds. And we cannot at this date bring ourselves to condemn the process by which the American continent has been acquired for European civilization. In order that such wars may be justified, it is necessary that there should be a very great and undeniable difference between the civilization of the colonizers and that of the dispossessed natives. It is necessary also that the climate should be one in which the invading race can flourish. When these conditions are satisfied the conquest becomes justified, though actual fighting against the dispossessed inhabitants ought, of course, to be avoided as far as is compatible with colonizing. Many humane people will object in theory to the justification of this form of robbery, but I do not think that any practical or effective objection is likely to be made.

Such wars, however, belong now to the past. The re-

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gions where the white men can live are all allotted, either to white races or to yellow races to whom the white man is not clearly superior, and whom, in any case, he is not strong enough to expel. Apart from small punitive expeditions, wars of colonization, in the true sense, are no longer possible. What are nowadays called colonial wars do not aim at the complete occupation of a country by a conquering race; they aim only at securing certain governmental and trading advantages. They belong, in fact, rather with what I call wars of prestige, than with wars of colonization in the old sense. There are, it is true, a few rare exceptions. The Greeks in the second Balkan war conducted a war of colonization against the Bulgarians; throughout a certain territory which they intended to occupy, they killed all the men, and carried off all the women. But in such cases, the only possible justification fails, since there is no evidence of superior civilization on the side of the conquerors.

In spite, however, of the fact that wars of colonization belong to the past, men's feelings and beliefs about war are still those appropriate to the extinct conditions which rendered such wars possible. When the present war began, many people in England imagined that if the Allies were victorious Germany would cease to exist: Germany was to be "destroyed" or "smashed," and since these phrases sounded vigorous and cheering, people failed to see that they were totally devoid of meaning. There are some seventy million Germans; with great good fortune, we might, in a successful war, succeed in killing two millions of them. There would then still be sixty-eight million Germans, and in a few years the loss of population due to the war would be made good. Germany is not merely a State, but a nation, bound together by a common language, common traditions, and common ideals. Whatever the outcome of the war, this nation will still exist at the end of it, and its strength cannot be permanently impaired. But imagination in what pertains to war is still dominated by Homer and the Old Testament; men

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who cannot see that circumstances have changed since those works were composed are called "practical" men and are said to be free from illusions. Those, on the other hand, who have some understanding of the modern world, and some capacity for freeing their minds from the influence of phrases, are called dreamy idealists, Utopians, traitors, and friends of every country but their own. If the facts were understood, wars amongst civilized nations would cease, owing to their inherent absurdity. Men's passions always lag behind their political organizations, and facts which leave no outlet for passions are not readily admitted. In order that hatred, pride and violence may find an outlet, men unconsciously blind themselves to the plainest facts of politics and economics, and modern war continues to be waged with the phrases and theories invented by simpler men in a simpler age.

IV.

The second type of war which may sometimes be justified is what may be called "the war of principle." To this kind belong the wars of Protestant and Catholic, and the English and American civil wars. In such cases, each side, or at least one side, is honestly convinced that the progress of mankind depends upon the adoption of certain beliefs—beliefs which, through blindness or natural depravity, mankind will not regard as reasonable, except when presented at the point of the bayonet. Such wars may be justified: for example, a nation practising religious toleration may be justified in resisting a persecuting nation holding a different creed. On this ground we might justify the resistance of the Dutch to the English and French combined in the time of Charles II. But wars of principle are much less often justified than is believed by those in whose age they occur. It is very rarely that a principle of genuine value to mankind can only be propagated by military force: as a rule, it is the bad part of men's principles, not the good part, which makes it necessary to fight for their defence. And for this reason the bad part

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rather than the good rises to prominence during the progress of the war of principle. A nation undertaking a war in defence of religious toleration would be almost certain to persecute those of its citizens who did not believe in religious toleration. A war on behalf of democracy, if it is long and fierce, is sure to end in the exclusion from all share of power of those who do not support the war. Mr. George Trevelyan in an eloquent passage describes the defeat which, as the ultimate outcome of our civil war, overtook alike the ideals of the Roundheads and the ideals of the Cavaliers. "And this was the curse of the victors, not to die, but to live, and almost to lose their awful faith in God, when they saw the Restoration, not of the old gaiety that was too gay for them and the old loyalty that was too loyal for them, but of corruption and selfishness that had neither country nor king. The sound of the Roundhead cannon has long ago died away, but still the silence of the garden is heavy with unalterable fate, brooding over besiegers and besieged, in such haste to destroy each other and permit only the vile to survive."[1] This common doom of opposite ideals is the usual, though not the invariable, penalty of supporting ideals by force. While it may therefore be conceded that such wars are not invariably to be condemned, we must nevertheless scrutinize very skeptically the claim of any particular war to be justified on the ground of the victory which it brings to some important principle.

There are some who maintain that the present war is a war in defence of democracy. I do not know whether this view is adopted by the Tsar, and for the sake of the stability of the Alliance I sincerely hope that it is not. I do not, however, desire to dispute the proposition that democracy in the western nations would suffer from the victory of Germany. What I do wish to dispute is the belief not infrequently entertained in England that if the Allies are victorious democracy can be forced upon

[1] George M. Trevelyan, *Clio, A Muse, and other Essays literary and pedestrian*, London, 1913, pp. 26–27.

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a reluctant Germany as part of the conditions of peace. Men who think thus have lost sight of the spirit of democracy in worship of the letter. The Germans have the form of government which they desire, and therefore any other form, imposed by alien victors, would be less in harmony with the spirit of democracy, however much it might conform to the letter. Men do right to desire strongly the victory of ideals which they believe to be important, but it is almost always a sign of yielding to undue impatience when men believe that what is valuable in their ideals can be furthered by the substitution of force for peaceful persuasion. To advocate democracy by war is only to repeat, on a vaster scale and with far more tragic results, the error of those who have sought it hitherto by the assassin's knife and the bomb of the anarchist.

V.

The next kind of war to be considered is the war of self-defence. This kind of war is almost universally admitted to be justifiable, and is condemned only by Christ and Tolstoy. The justification of wars of self-defence is very convenient, since so far as I know there has never yet been a war which was not one of self-defence. Every strategist assures us that the true defence is offence; every great nation believes that its own overwhelming strength is the only possible guarantee of the world's peace and can only be secured by the defeat of other nations. In the present war, Servia is defending itself against the brutal aggression of Austria-Hungary; Austria-Hungary is defending itself against the disruptive revolutionary agitation which Servia is believed to have fomented; Russia is defending Slavdom against the menace of Teutonic aggression; Germany is defending Teutonic civilization against the encroachments of the Slav; France is defending itself against a repetition of 1870; and England, which sought only the preservation of the *status quo*, is defending itself against a prospective menace to its maritime supremacy. The claim of each side to be fighting in self-defence appears to the other side

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mere wanton hypocrisy, because in each case the other side believes that self-defence is only to be achieved by conquest. So long as the principle of self-defence is recognized as affording always a sufficient justification for war, this tragic conflict of irresistible claims remains unavoidable. In certain cases, where there is a clash of differing civilizations, a war of self-defence may be justified on the same grounds as a war of principle. I think, however, that, even as a matter of practical politics, the principle of non-resistance contains an immense measure of wisdom if only men would have the courage to carry it out. The evils suffered during a hostile invasion are suffered because resistance is offered: the Duchy of Luxemburg, which was not in a position to offer resistance, has escaped the fate of the other regions occupied by hostile troops. What one civilized nation can achieve against another by means of conquest is very much less than is commonly supposed. It is said, both here and in Germany, that each side is fighting for its existence; but when this phrase is scrutinized, it is found to cover a great deal of confusion of thought induced by unreasoning panic. We cannot destroy Germany even by a complete military victory, nor conversely, could Germany destroy England even if our Navy were sunk and London occupied by the Prussians. English civilization, the English language, English manufactures would still exist, and as a matter of practical politics it would be totally impossible for Germany to establish a tyranny in this country. If the Germans, instead of being resisted by force of arms, had been passively permitted to establish themselves wherever they pleased, the halo of glory and courage surrounding the brutality of military success would have been absent, and public opinion in Germany itself would have rendered any oppression impossible. The history of our own dealings with our colonies affords abundant examples to show that under such circumstances the refusal of self-government is not possible. In a word, it is the means of repelling hostile aggression which make hostile aggression disastrous and which generate the

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fear by which hostile nations come to think aggression justified. As between civilized nations, therefore, non-resistance would seem not only a distant religious ideal, but the course of practical wisdom. Only pride and fear stand in the way of its adoption. But the pride of military glory might be overcome by a nobler pride, and the fear might be overcome by a clearer realization of the solidity and indestructibility of a modern civilized nation.

VI.

The last kind of war we have to consider is what I have called "the war of prestige." Prestige is seldom more than one element in the causes of a war, but it is often a very important element. In the present war, until the war had actually broken out, it was almost the only thing involved, although as soon as the war began other and much more important matters came to be at stake. The initial question between Austria and Russia was almost wholly one of prestige. The lives of Balkan peasants could not have been much affected for good or evil by the participation or non-participation of Austrian officials in the trial of supposed Servian accomplices in the Sarajevo murders. This important question, which is the one on which the war is being fought, concerns what is called the hegemony of the Balkans, and this is entirely a question of prestige. Men desire the sense of triumph, and fear the sense of humiliation which they would have in yielding to the demands of another nation. Rather than forego the triumph, rather than endure the humiliation, they are willing to inflict upon the world all those disasters which it is now suffering and all that exhaustion and impoverishment which it must long continue to suffer. The willingness to inflict and endure such evils is almost universally praised; it is called high-spirited, worthy of a great nation, showing fidelity to ancestral traditions. The slightest sign of reasonableness is attributed to fear, and received with shame on the one side and with derision on the other. In private life exactly the same state of opinion existed so long as duelling was

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practised, and exists still in those countries in which this custom still survives. It is now recognized, at any rate in the Anglo-Saxon world, that the so called "honor" which made duelling appear inevitable was a folly and a delusion. It is perhaps not too much to hope that the day may come when the honor of nations, like that of individuals, will be no longer measured by their willingness to inflict slaughter. It can hardly be hoped, however, that such a change will be brought about while the affairs of nations are left in the keeping of diplomatists whose status is bound up with the diplomatic or military triumph of the countries from which they come, and whose manner of life renders them unusually ignorant of all the political and economic facts of real importance and of all the changes of opinions and organization which make the present world different from that of the eighteenth century. If any real progress is to be made in introducing sanity into international relations, it is vital that these relations should be in the hands of men less aloof and less aristocratic, more in touch with common life, and more emancipated from the prejudices of a bygone age. It is necessary also that popular education, instead of inflaming the hatred of foreigners and representing even the tiniest triumph as worthy of even the greatest sacrifices, should aim rather at producing some sense of the solidarity of mankind and of the paltriness of those objects to which diplomatists, often secretly, think fit to pledge the manhood and heroism of nations.

The objects for which men have fought in the past, whether just or unjust, are no longer to be achieved by wars amongst civilized nations. A great weight of tradition, of financial interests, of political insincerity, is bound up with the anachronism of international hostility. It is, however, perhaps not chimerical to hope that the present war, which has shocked the conscience of mankind more than any war in previous history, may produce a revulsion against antiquated methods, and may lead the exhausted nations to insist upon that brotherhood and co-operation which their rulers have hitherto denied them. There is no

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reason whatever against the settlement of all disputes by a Council of the Powers deliberating in public. Nothing stands in its way except the pride of rulers who wish to remain uncontrolled by anything higher than their own will. When this great tragedy has worked itself out to its disastrous conclusion, when the passions of hate and self-assertion have given place to compassion with the universal misery, the nations will perhaps realize that they have fought in blindness and delusion, and that the way of mercy is the way of happiness for all.

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INTERNATIONAL MORALITY.

ARTHUR PONSONBY, M. P.

OUR conception of nations is in a certain sense personal; that is to say they seem to have a sort of individuality of their own and in their dealings and behavior may be judged by a personal standard. But it is difficult to analyze the elements which go to make up the popular conception of one nation by another. The traditional symbolic figures used by cartoonists of all nationalities in their pictorial presentment of international events often become exaggerated into caricatures portraying national peculiarities in a rude and comic form, but they serve as a basis for the popular notion of the foreigner. Personal intercourse between travellers and foreign residents, historical knowledge which is comparatively rare, and scraps of foreign news occasionally appearing in the newspapers help to fill in the details and an undefinable and yet distinct conception of what is felt to be the personality of a nation is thus formed. Personal qualities are attributed to the mass which are not always identical with the qualities found to exist in individuals composing that mass. But this rough characterization, which is by no means without justification, will not carry anyone very far in the comprehension of foreign character. A traveller is struck not so much by the peculiarity of the people he visits for the first time as by their similarity to his own kith and kin. He feels, however, after a while, a difference of temperament, of perspective and of ideal, a subtle difference of character and method, which are more fundamental than the differences in appearance, manner, habit and customs. But what is a nation?

A nation is not in its composition primarily a geographical nor a racial, but a political unit. It may extend over an area which has no geographical unity, it may com-

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prise several races, but it must be able to uphold its independent political sovereignty. Precise definitions, which in the case of individual relations or even in the case of the relations of small communities of people to one another are comparatively simple, become exceedingly complex in regard to nations. As civilization has advanced, usage, expediency and agreements, varying in character and scope, between one state and another, have gradually produced a set of regulations which govern international relations and are known as international law. Unlike other law, the sanction for international law is indeterminate, resting in the degree in which each state considers certain obligations binding in special and sometimes varying circumstances. There is no supreme authority as in ordinary law to insist on or enforce obedience from all nations to any precise code, but, in the main, there is a moral obligation to conform to to which no civilized state is insensible, though its interpretation of its duty may, as in the case of individuals, become modified by special ambitions. A moral sense rests in the state somewhere. The question is how can it be reached, in what way can it be influenced and stimulated, and how may it be made to respond to its equivalent in other states.

Like human beings, states differ widely in size and development. Restricted size by no means denotes inferiority or interferes with prosperity; on the contrary it can well be maintained that it materially assists it. Extended area, on the other hand, does not mean superiority, though it is frequently a matter for empty boasting. It chiefly signifies a much heavier weight of responsibility, which, in some cases, it may be found difficult to carry. Differences in development are more marked and more important than differences in size, because they signify various forms of government and therefore correspond to great differences in the truly representative character of those who speak for the nation. In a more or less autocratically-governed state, the nation's voice represents only the opinion of the sovereign and his advisers. In a more or

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less democratically-governed state it is the opinion of a government nominated from elected representatives. Even in the latter case, however, for reasons which will be made clear later, the people's opinion carries little or no weight and exercises no influence. Yet, however unrepresentative Foreign Ministers may be, their intercourse is the intercourse of nations, their opinion is accepted as the national opinion, their decisions bind the whole nation for whom they speak.

Those who have been following the course of world politics during the last few years have been conscious of a great change in the relations between sovereign states. While outwardly the same conventions and methods of intercourse between nations have been followed as in previous centuries, and while international communication in the official world has continued more or less on the old lines, except for a greater centralization resulting from the introduction of the telegraph, there has been a marked and rapid development of intercourse socially, commercially, and financially among the peoples, a development of such a kind as to disclose more and more the inadequacy, and sometimes the positive inaccuracy, of the official voice as compared with the national sentiments. To put it in another way: Owing to the remarkable inventions and discoveries of the last half century, notably the rapidity of communication and transit, nations have been drawn closer to one another, the world has become smaller, international movements have grown, the common interests of labor have been recognized, financial bonds have become stronger and more complex, and mutual knowledge and sympathy among the peoples has steadily increased. But, side by side with this, there has been no change whatever in the methods of diplomacy or in the means adopted, even in the most democratically-governed countries, to make a nation articulate.

The protest against this growing inconsistency and want of sympathy between voice and sentiment has been feeble, and confined to the few who foresaw the dangers

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that might arise from it. The peoples meanwhile—though by improved education increasingly capable of examining and pronouncing on matters of home politics—continued to be excluded from knowledge of foreign policy and from even a remote participation in its management. They accordingly take little or no interest in foreign affairs, though expressions of bewilderment and resentment escape them when rumors of war are circulated for no ostensible or conceivable reason of which they have any knowledge. Directly the dark cloud of actual war covers the whole sky; it is easy enough for each Government to tell its people whatever version it chooses of the cause and origin of the catastrophe, which each one in turn declares to be inevitable. In such circumstances, the people in their ignorance, and in the turmoil of impending calamity, will listen eagerly to the appeals of patriotism and concentrate their energies on the maintenance of national security, not concerning themselves with negotiations, conversations, treaties and ultimatums which they are quite unable to follow; indeed, any expression of opinion on their part generally serves to show how entirely in the dark they have been kept with regard to foreign politics, and how utterly incapable they are, owing to their enforced ignorance, of forming any judgment on the merits of international disputes. Yet, since the beginning of this century, the obvious advantages of peace, more especially from the economic and social point of view, had come to be more fully realized; the humanitarian arguments against war were beginning to be re-enforced by opinions founded on a more utilitarian and rationalistic basis, and the futility of war even more than its horrors was more generally recognized. But governments failed to respond; they failed to reflect or to take advantage of this awakening sentiment, and they never troubled to get the sanction and endorsement of public opinion for the line of policy they were pursuing. The great powers of Europe with an almost dogged determination began to prepare

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for a conflict which need not have been inevitable, but which by their policy and action they made inevitable.

It would be an exaggeration to say that the Governments alone were warlike and the peoples were permeated by entirely pacific sentiments. It is, unfortunately, too true that the Chauvinist spirit is easily engendered, and where the lust for dominion, the worship of force, and the ignorant and aggressive spirit of Imperial ascendancy prevail, pure unadulterated Jingoism exists with all its sentimentality, and the flame can easily be fanned into a blaze by a judicious stirring of popular indignation. What governments have entirely failed to do is to smother the flame or stifle these dangerous sentiments; on the contrary, they know that they can depend on this spirit to infect a whole nation when they have chosen the moment to strike. In fact the tendency of the governing class is to preserve for use in emergencies the lowest passions of the most ignorant section of the population, and to deride the endeavors of the more enlightened to inculcate pacific notions into the public mind. War makes a selfish appeal, as the costly preparation for it actually pays some individuals in the purely financial sense; peace only pays the whole community in the long run. Therefore, as humanity is at present constituted, the former appeal will continue to be the stronger until the entire armaments business is placed under the sole control of the state. The pronounced growth of materialism in all classes within recent years has assisted very considerably in fostering the belief in gain by conquest, and has retarded the more idealistic belief in progress through peace. Thus it was that in the course of a week a series of diplomatic disputes was sufficient to plunge the whole of Europe into the most devastating war the world has ever seen. The actual quarrel between a few ministers, diplomats and monarchs was not the initial cause of war. It was the match struck in the powder magazine. The powder had been stored years before; secret diplomacy had committed each country to a certain perilous line of policy; the armaments competition had

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been carried on in direct defiance of the wisest opinion even of statesmen, and war became inevitable long before the diplomats began to quarrel. In any case the peoples had no voice whatever either in the scattering of the gunpowder or the striking of the match. None of the decisions had their approval; the policy, as in all such cases, was presented to them as a *fait accompli*.

The crucial question is whether the arbitrament of arms is the only method of attempting to settle acute differences. Is periodic war in fact inevitable? Whatever policy nations may adopt, will the evil passions of mankind in the mass always have to find vent until mankind as a whole has gone through a process of regeneration—that is until the millennium? Or can we set aside the fatalistic doctrine of inevitability, and, by allowing the improved state of feeling between peoples directly to influence governments, create in the course of time a new international usage of compulsory arbitration and mediation for the real settlement of disputes, and divert national energy into channels where it can operate against the truly destructive elements in the social life of each nation? Unfortunately, while the generation that experiences war and has immediate knowledge of its horrors and also of its futility is ready to learn a lesson, the succeeding generations have war presented to them in a historical setting bereft of its poignant and cruel reality, and they are accordingly far more acquiescent in its recurrence than their fathers would be in their place. Thus war successfully makes its appeal afresh to the lowest passions of each succeeding generation.

There is no doubt a combative instinct in man. In the old racial feuds in barbaric times it was the prevailing instinct. Later on it became harnessed and organized by sovereigns in their dynastic wars. Ambitious statesmen and monarchs and unscrupulous governments, knowing the strength of the emotional appeal of war, are still able to count on this instinct to further their ends, though racial animosities have been very much reduced as the attention of the democracies becomes more and more

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occupied with industrial and economic problems at home which immediately concern them. The masses, although they are more articulate and self-conscious than formerly, are still handicapped by another instinct. This is the class instinct of subservience and obedience to their social superiors, and it is so deeply engrained that they can be easily disciplined and readily obey, more especially in countries where conscription exists. It is true then that it would take many centuries to strengthen as well as educate the mass of the people. But how about governments? Is it possible to influence them and persuade them that murder and pillage, on however large scale it may be undertaken, will not, in national life any more than in individual life, solve disputes or remedy injustice?

A very important factor to be taken into account in this connection is the traditional ambition of a nation, for it is on this that its foreign policy is founded. It may be territorial aggrandizement, it may be commercial expansion, it may be consolidation, it may simply be self-defence. But it matters a great deal what particular form the national ideal takes. To ignore this, and to formulate abstract principles on which nations ought to act, is to court failure in any attempt to adjust international relations on anything like a permanently satisfactory basis. National ambitions seldom now take a merely dynastic form. Reigning families inherit certain traditions from the middle ages when the state was the private hereditary possession of the sovereign; and from these traditions, in many cases, a national policy is evolved. The main difference between the present and the past in this respect is that autocracy is gradually being superseded by democracy and that internal development is now generally understood to be more vitally important than any extra territorial acquisitions. Sometimes, however, the two are to some extent interdependent. A growing population may develop commercial ambitions which seem to necessitate expansion, and the trouble comes when between two or more states there is a clash or conflict inevitable in the achievement of the ob-

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jects they have in view. Even this, however, would seem to be capable of adjustment by diplomatic means and capable of a settlement far more likely to be permanent than any settlement arrived at in consequence of war. Indeed the most serious argument against war is that it does not settle any dispute, but creates many new ones, which become the seeds of future wars. The conflicting ambitions, however, when left in the hands of a very small governing class and manipulated by them secretly, increase in intensity and are the real cause of trouble. As these ambitions cannot be altered, except in the course of time, there is a strong reason for a drastic change in the character and methods in each country of the authority which acts as the intermediary and claims to be the nation's voice.

Very few people know anything at all of how nations speak to one another; they do not understand that they are in constant communication, often of a confidential or secret character, and that their serious quarrels seldom arise from the correspondence of a few weeks which is eventually published to the world, but on the outcome of a diplomatic attitude adopted over a course of years. The diplomatic service in most countries is composed of men who have to be well off in order that one stratum, and that the upper social stratum, may alone be the class represented. They are kept abroad from an early age and grow entirely out of touch with the changes in sentiment or the new progressive movements in their own country. Diplomacy is an intricate game, nations are the pieces, secrecy and intrigue is part and parcel of the business. The foreign minister in one capital converses with the ambassador of a certain power; the foreign minister of that power converses with the other ambassador in the other capital. There is therefore a double method of communication. The two do not always tally, which is the cause not infrequently of grave confusion—a confusion which is by no means dispelled when the monarchs interfere and start a correspondence of their own. The whole system with its utterly out of date machinery, its absurd secrecy and intrigue, its

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burlesque customs and pompous ceremonials, is calculated to produce the maximum amount of friction and of misunderstandings. The tone, the temper, the manner of the various representatives, though entirely unimportant matters, in reality are often the determining factor in the success or failure of negotiations. A slighting word or tactless phrase from the lips of an ambassador to a foreign minister constitutes an insult from one whole nation, government and people to another whole nation. All this intercommunication can be concealed from the parliaments and people, who are only told just so much as is supposed to be good for them to know, and when statements are occasionally vouchsafed, it is often more with a view to mystification than elucidation. Until this antique method is changed, and as long as the game continues to be played only by a few of the governing class, it will constitute a perpetual source of danger. No doubt a certain amount of secrecy is essential. The people do not ask their so-called representatives to show their cards while play is proceeding, but they do demand and rightly demand that they should be told what game is being played, inasmuch as it is they in the long run who have to pay the heavy stakes.

Intercourse among people of different nations can be and is carried on without friction and with due regard to the promotion of a common object. Scientific research, discovery and invention, have progressed by leaps and bounds chiefly on account of international co-operation; the friendly rivalry produced by the closer interpendence of commerce has all been to the world's advantage. Latterly, too, the interests of labor have gradually become internationalized, this fundamental common interest being obviously more important than superficial national differences. The extended movement may almost have been strangled in its infancy by recent events, but it will probably revive all the stronger from the shock. Why then is it impossible for political activities to be co-ordinated and dealt with for the common benefit? It is not impossible, it is only more difficult, and as yet nothing worth calling a

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serious attempt to bring the nations of the world together has been made.

It is the European family whose discords and traditional differences are the most disturbing elements to the world's peace. Africa suffers from the ambitions of Europe; Asia from her example. In Spanish America the states are hampered by constant internal dissension. North America alone is sufficiently fortunately situated to pursue an internal progressive development based on a more lasting peace. But war now is not a matter of struggle between two combatants; we see that it draws in one power after another until a whole continent, and indeed the whole world, is directly or indirectly involved. The problem before us in the future, therefore, is practically world-wide. If the European war of 1914 is accepted as the negation of the existence of international morality, as an exposure of the utter failure of all the efforts of pacifists, as a vindication of the militarist policy and the justification of force, as another proof of the ineradicable passion of humanity for conflict, and as the only ultimate method of settling international differences, then counsel is useless, no foresight for the future need be taken, and we can repeat with Von Bernhardi that "war is a great civilizing influence," "a biological necessity of the first importance that cannot be dispensed with" and that "efforts to secure peace are extraordinarily detrimental to the national health." If, on the other hand, we believe that the European war of 1914 will produce a shock so profound and so shattering that not one nation or another but humanity as a whole will be stirred to its depths to make renewed efforts to liberate the latent moral sense in each nation, to insist that it shall be more adequately expressed in future, and to demand from governments an absolute guarantee and safeguard against the recurrence of so hideous a catastrophe—then thoughtful men must not remain with folded hands waiting to see how matters will shape themselves and what sort of fresh dispute is to arise, but they must lay down certain broad principles for the guidance of policy in the

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future and for the establishment of international justice. It is, however, as well to see beforehand what are the obstacles to be overcome in the desired realization, not of an Utopian ideal, but of a marked improvement, which in its advance must be commensurate in the progressive direction with the war in its bound towards the depths of reaction.

In addition to the antiquated methods of diplomacy referred to above, in addition to the want of enlightenment among a large section of the people, in addition to the reverence for the martial spirit which exists in a justifiable form when based on pride in military achievements and the glories of the past and also in a contemptible form in mere outbursts of Jingoism, there is the far more complex problem caused by national ambition, which has already been noted, and which ought to be examined in conjunction with the characteristics of the people, not only from the general point of view of all, but from the particular point of view of each state. In doing so briefly, it will be well to avoid particulars which may lead to disputed ground, I shall confine myself to those generalities which form the underlying motive of policy.

Great Britain, for instance, has no desire to extend its territory. The responsibility of a world-wide Empire is already a burden very difficult to bear. But considering its island position, and in order to consolidate this extended Empire, the command of the sea is very naturally felt to be a vital necessity. The policy of expansion is a thing of the past, and it is sometimes forgotten when the motives of other nations are being judged, that we, ourselves, were in our day aggressive and set the example of modern Empire building. But to-day consolidation, both at home and in the dominions, is the only sound foundation of policy. France, too, has colonies and has been increasing its territory, but its desire for expansion is not aggressive. The lesson of the Napoleonic wars has taught the French people the fatal results of exaggerated aggrandizement. But France has a rankling resentment at having been driven

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from provinces that it regarded as part of its own soil. This grievance, the outcome of the war of 1870, has been nursed with increasing rather than diminishing bitterness, and it has constituted one of the great European perils—a festering sore that has never healed. The policy of the German Empire has been an increasing desire for expansion, based on the militarism by which the Empire was created; its central position in Europe has engendered in the people a fear of attack from either side, while its marked commercial progress demanded wider scope in colonial enterprise. Austrian policy also has been one of expansion, which has been aggressively directed towards the Balkan peninsula; while Servia, encouraged by recent successes, has looked forward to an extension of territory at Austria's expense and counted on the internal racial troubles in the Austrian Empire to further its cause. In Europe, Italy desires only the recovery of lost territory but colonial ambitions in Africa led her into a provocative move against Turkey. The latter, in its stages of decay, gradually driven out of its European dominions and thereby attracting in desperate rivalry the other Balkan states, has by its break-up caused the most complex and perilous problems in which all the great Powers have become directly interested. Russia, still under a primitive form of autocracy, has consistently followed, since the days of Peter the Great, a policy of aggrandizement, not the expansion which becomes imperative for a thriving industrial community, nor the expansion of colonial enterprise, but the immediate enlargement of its own frontiers; and Russian success in the pursuit of this aim has been remarkable, but alarming. The smaller states of Western Europe have asked for nothing but to be left alone in peace, and several of them, in consequence of being able to devote their attention primarily and almost exclusively to the welfare of their own people, have set examples of good government and prosperity which the greater powers, whose greatness consisted of mere size and wealth, have been unable to follow. But they are largely at the mercy of the great

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powers, and their reasonable demand is that their integrity, their independence and their neutrality may be respected. Outside Europe, Japan, aping the Western powers in the worship of and confidence in force, has turned herself into a military power with aggressive ambitions. While in the vast area of China, if any national desire could be formulated, it would be that the Empire should be protected from the exploitations of the Western powers. The United States of America, fortunate in being freed from European entanglements, has in its vast continent problems enough to occupy its attention. The Atlantic like the rest of the world having become smaller, the designs of European nations, so many of whose subjects have found homes in America, have to be vigilantly watched. If the command of the sea fell into the hands of a power with hostile intentions towards the Western Continent, the United States would find itself drawn into the European system, and an attitude of non-intervention and aloofness would no longer be tenable.

Where then do the danger points lie? Neither between Western and Orientals, Anglo-Saxons and Latins, Teutons and Slavs is the racial hatred so deeply rooted in the minds of the peoples as to constitute a constant menace to the world's peace. Primitive racial animosity may therefore be practically set aside as a prime cause of war. It is in the political ambitions of the governments of each of the states that differences and disputes must arise. Aggressive desire for expansion must beget dangerous jealousy and rivalry. No one nation can profit in this direction except at the expense of another nation. The partition of dying or decaying countries forms the greatest temptation. The wars that ensue, giving to the nation which at the time happens to be best equipped in armaments an unfair advantage, so far from settling the controversy leave only a resented humiliation and desire for revenge. One war leads to another and one generation bequeaths a legacy of critical problems for the next to wrangle over. One nation

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follows another in usurping for a time a preponderating domination based on force and material aggrandizement.

Even governments, it must be acknowledged, unless they consider their interests threatened, do not desire war. But in the less democratically-governed states, there are powerful sections outside direct governmental control which wield considerable, and, sometimes, supreme power. Various policies and diplomatic formulæ are devised from time to time for the adjustment of possible differences. In minor concerns recourse is had more frequently to arbitration. But the expenditure of their best resources on armaments amounts to a declaration on the part of governments that in certain eventualities they expect and count upon the failure of diplomatic methods. It is only the very foolish who can be made to believe that the best way to maintain peace is to prepare for war. War preparations are made for fighting, in the belief that where arbitration or diplomacy fails, carnage will succeed.

In Europe two policies have been adopted from time to time by the great Powers in their international relations: Alliances leading to an attempt to equalize rival forces or maintaining what is known as the Balance of Power; by mutual co-operation by the formation of a European Concert. The first of these was brought forward on many occasions during the nineteenth century as an excuse for alliances and hostile action, and has again found favor in recent years in the Chancelleries of Europe, more especially in the British Foreign Office. The idea is to counterbalance the threatening supremacy of one group or combination of powers by forming another group to prevent that supremacy from becoming an accomplished fact. This may seem plausible on the surface, and the word "balance" has a judicial and almost impartial sound about it. The word, however, is quite inaccurate, for the simple reason that the attainment of equipoise is an impossibility, and what is aimed at, therefore, is not balance at all but preponderance. The two groups eye one another with suspicion, the smallest point of difference becomes a matter of

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bargain and consequent tension. Rival claims are warmly contested, understandings are concluded in secret between the members of the same group. Any attempt at expansion by a great power on one side is immediately regarded as a hostile act by the rival group. Any possibility of improved relations between powers in the opposing camps is made too difficult ever to be successful. Peacefully inclined powers become tied to powers whose position may be precarious and whose inclinations may be bellicose. John Bright's denunciation of this policy in 1864 is worth quoting:

"You cannot comprehend at a thought what is meant by the Balance of Power. If the record could be brought before you—but it is not possible to the eye of humanity to scan the scroll upon which are recorded the sufferings which the theory of the Balance of Power has entailed upon this country. It rises up before me when I think of it as a ghastly phantom which during one hundred and seventy years, whilst it has been worshipped in this country, has loaded the nation with debt and with taxes, has sacrificed the lives of hundreds of thousands of Englishmen, has desolated the homes of millions of families, and has left us, as the great result of the profligate expenditure it has caused, a doubled peerage at one end of the social scale, and far more than a doubled pauperism at the other. I am very glad to be here to-night, amongst other things, to be able to say that we may rejoice that this foul idol—fouler than any heathen tribe ever worshipped—has at last been thrown down, and that there is one superstition less which has its hold upon the minds of English statesmen and of the English people."

But the superstition was revived and its mischievous consequences are only too tragically apparent to-day. The two groups once constituted must arm against one another. A keen competition begins in the preparation of munitions of war and the invention of engines of destruction. The best resources of the nations are drawn upon; weaker and poorer states following the example of others

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are reduced to a practical condition of bankruptcy; armament firms with their directors and investors make huge profits and encourage with all the great influence they have at their command, in the press and elsewhere, the doctrine on which they thrive. The idea of war is popularized, the possibility of war is accepted, the imminence of war is welcomed and the actual advent of war is hastened. Within the last decade fleets and armies have been equipped at great cost. Every year the naval and military estimates of the powers have risen by leaps and bounds. The people have been heavily taxed, and social and domestic reforms have been delayed, and in some countries prevented, until at last Europe was spending something like six hundred millions a year on armaments. Meanwhile the people were hoodwinked by being told that all this was entirely for "national defence"; but some saw clearly enough that it was the preliminary to national ruin and to the overthrow of civilization by a return to barbarism. But no one government was able to stop so long as others went on. Each took refuge in the excuse that nothing could prevent it and nothing could be done, and no endeavor was made by any one of them to check the headlong rush into hideous disaster. Agreement, indeed, was rendered practically impossible while the powers were divided into two hostile groups.

There can be no question now that as a means of maintaining European peace nothing could be better calculated to lead to complete and absolute failure than the policy of the Balance of Power. Events have proved that those who had sufficient foresight to expect disastrous results from the pursuit of this policy have, unfortunately, been fully justified. Once a Triple entente was formed to counterbalance the Triple alliance, it did not require any very great acumen or imagination to anticipate an early conflict. A superficial notion gains favor that the military domination of one power can be crushed by the military action of another power. Whereas any attempt to crush from outside the military domination and the

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militarist spirit of one nation has the inevitable effect of creating these evils in some other nation. The scourge of militarism can only be cured from within.

The alternative policy to the Balance is that which is known as the Concert of Europe. That is to say the formation of no definite alliances or special compacts between groups of powers, but the freedom of all in ordinary circumstances and the co-operation of all in special circumstances. The Concert has its disadvantages. It cannot act rapidly; and to obtain unanimity, its action must be at times negative rather than positive. But no danger whatever attends it, and the very fact of its existence is in itself a guarantee for the maintenance of peace. The policy of Concert was momentarily revived in place of the policy of Balance during the Balkan war, when there was far more cause for a general European conflagration than there was from the isolated event of the Sarajevo assassinations. Conflict between the powers of Europe was successfully avoided, though it is true that nothing effective could be done to prevent the Balkan States from fighting it out. But this was momentary. Balance held the field; it was revived, and its rich harvest of death, destruction and desolation is now being reaped. Every thinking man with the hideous facts before him to-day is anyhow determined that no statesman in the future shall be allowed to revive the policy of the Balance of Power.

If the idea of the waging of war just for war's sake is only held by a negligible body of opinion in civilized countries—most people regarding it as a very regrettable necessity—and if the inevitability of war can be rationally disproved, surely it is not beyond human power to devise means for preventing what experience has now so often shown to be the failure of the diplomatic method in the conduct of critical negotiations. Taking as a basis the policy of concerted action and discarding for good and all the policy of special friendships, secret entanglements, of alliances and of balance, practical machinery has still to be devised to cope with the various dilemmas as they arise. Opportu-

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nities for arbitration have undoubtedly increased, and many dangerous moments of friction, that in years gone by would have constituted sufficient ground for the outbreak of hostilities, have been tided over. But recent events show that circumstances may still arise in which the momentum caused by precipitate action on the part of one or more nations is irresistible. Calling the Concert of Europe into being is too long a process to be effective when rapid decisions are necessary and delay would be fatal. But since in every capital all the powers are represented permanently, an easier way presents itself if the policy of co-operation is once accepted. It would be possible, for instance, for the powers to decide forthwith at which capital the central deliberations should be held, and the accredited representatives in that capital would at once convert themselves into a conference. This method indeed was adopted in London during the Balkan war. It ought, however, to be permanently accepted as the recognized machinery coming automatically into action to deal with questions of difference between European powers as and when they appear on the diplomatic horizon. The only decision to be taken at the moment is the choice of the capital, which should not be the capital of any of the countries party to the dispute. Without any other preliminaries whatever, this decision can be made by telegraph in the course of a few hours, and once the conference is set up, most of the overlapping, repetition, cross purposes, inconsistences and misunderstandings, which so often lead to confusion under the present method, would be avoided. Supplement this with the fact that diplomatic representatives would be men chosen on their merits from the people at large, and with the further still more important change that, while they would be plenipotentiaries, the lines of their policy would have the sanction and their decisions the ratification of their respective Parliaments, and you have an infinitely more satisfactory method of arriving at conclusions of lasting value, based on real consent and respect for national feeling. A faithful representation of the people's views is

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more difficult in countries where the sovereign's personal rule still exists. But it is not unlikely that one of the results of a war of unprecedented magnitude will be a further broadening of the democratic principle in those governments which are still encumbered with the relics of autocratic and aristocratic rule.

Such a reconstruction of diplomatic methods, as described above, might eventually lead to the constitution of a European Council. But it is no good looking too far ahead, and it would seem in some ways that diplomatists in close contact with the every-day routine of international affairs were better adapted to deal with special questions which suddenly crop up than any outside delegates, however eminent, who are kept aloof from the usual intercourse which is proceeding between nations in ordinary times. In all this, co-operation, mutual assistance, identity of aim, common action, concerted deliberation is the indispensable foundation. And it is surely no fanciful dream to expect that the strong inclination of the people of Europe, when the lessons of the present war have been brought home, will be turned in this direction. On the termination of hostilities the first immediate steps will be the calling together of an International Congress. It will at once be necessary therefore to prevent the old evils from being perpetuated, to ensure that decisions are not come to by diplomatists behind the backs of the people and that anyhow so far as Great Britain is concerned the settlement is one that has full democratic sanction.

Certain it is that the best opinion in every country will now demand some sort of safeguard against the stupendous sacrifice which war under modern conditions demands. Those who can turn their minds at the earliest possible moment to future international policy are not indulging in vague speculation, but are helping to guide public opinion, and so influence governments in their future action. The problems are vaster than any which have presented themselves to the human mind in time past, but some of the remedies are fairly obvious. Unfortunately, after the

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emotions of war have passed away, recriminations and the apportionment of blame occupy too much attention. But the peoples, if not the governments, should have the good sense to waste no time in this way, but merely use the past as a warning which may prevent them from being led into such perilous paths in time to come. The moral sense of nations must be made articulate and must be fortified. Some progress, proportionate to the improvement in individual morality, must be gained in international morality.

Even if international morality is different from individual morality, the difference is one of degree, not of quality, because it is founded on the moral sense of a body of individuals, and, in proportion as that moral sense progresses and develops in the process of civilization, the corporate morality must in turn progress, more slowly, perhaps, owing to the difficulty of its finding proper means of expressing itself. Nations no more than individuals need expect to escape the inevitable retribution which follows the infringement of the moral law. But their code is, comparatively speaking, elementary and far more primitive than it need be. Cannot magnanimity, generosity and even sacrifice and renunciation figure more openly in a nation's dealings? Cannot statesmen introduce into their public conduct as spokesmen of their respective nations the same ethical values as they are ready to recognize in their private affairs? No doubt this is too much to expect in war time, when each nation genuinely believes itself to be right. While nations are actually at war, the tendency of each belligerent is to believe in its own superiority and in the providential character of its special civilizing mission, for which the Divine aid is invoked; the refusal of either party to tolerate any view of justice but its own (which means no interference with its own interests); and the determination to put the entire blame on the enemy, who must be humiliated at all costs; in the midst of these forces ethical values must perhaps be inevitably forgotten. But even in peace time selfishness, international suspicion and cynical disregard of the claims of other countries figure too

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largely. In the case of individuals this arrogance, self-righteousness and self-complacency would be intolerable. But we may comfort ourselves with the fact that often in existing conditions it is not the real national feeling that is expressed. Anyhow a saner conception of patriotism, a higher moral tone, a larger sympathy, a more intelligent considerateness, will, we may confidently hope, find a place in the intercourse between nations in the future. It is also essential that those responsible for the conduct of foreign affairs in each country should not rest satisfied with mere political and diplomatic knowledge of foreign countries, they must cease observing the world through official spectacles, which exclude some of the most important considerations from their focus, and they must be endowed with sufficient imagination to understand that nations are not inanimate pawns, but aggregates of sentient beings. A more intimate knowledge of foreign national character and a fuller comprehension of the temperament, the ideals and the aspirations of other peoples must be part of their equipment. Then the policy they advocate will have the advantage of being based on vital practical realities instead of on unreal artificial theories. The peculiarities and special characteristics of nationality are enduring, and their preservation is an appreciable and very valuable asset in the progress of civilization. The principle of nationality must everywhere be respected; but the common intelligence, the common moral sense and the common humanity which is inherent in all must be allowed to dominate over the human weaknesses and petty differences which too often lead to conflict. The great impulses which unite are far finer and more creditable than the small prejudices which separate. Pride of race need not degenerate into arrogance, national sentiment need not deteriorate into selfishness, legitimate patriotism does not mean conceit. States in time to come will develop a more intelligent conception, not only of their own rights and liberties, but of their duties and obligations in the family of nations.

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Too few people have turned their thoughts to the examination of these larger problems, deterred, no doubt, as they have been by the vast dimensions and extreme complexity of the questions at issue. But in the near future many more will be asking questions and seeking information as to matters which have been kept from them, and in which they hardly realized that they were even remotely concerned. There is no need for despair even in the darkest moment, when great ideals are shattered and confident hopes have proved vain. The triumph of the disciples of force and the champions of might, though clamorous, is short-lived. Safeguards against the disaster which comes from ignorance, vainglory and unscrupulous ambition will certainly be discovered. And those who will take the trouble to think, exercise their imagination, and make the effort to lift their thoughts from out of the old ruts of past usage, tradition, outworn customs and fallacies, and the discredited doctrines of inevitability—the refuge of lazy minds—can one and all contribute to the establishment of a new order of things, a new European system, a new sense of responsibility and a new moral susceptibility among the nations of the world. They will learn that reconciliation is more valuable than victory.

Diplomacy has failed, its method is wrong, the policy on which it is based is discredited. The argument of might has triumphed for the moment, but when its certain failure comes, every nerve must be strained by right-thinking men and women throughout the world to combat the forces of reaction and prevent the lower instincts of the herd prevailing again over the more enlightened opinion which is to be found in the heart of every civilized country.

ARTHUR PONSONBY.

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THE CHANGING CONCEPTION OF PROPERTY.

HARRY ALLEN OVERSTREET.

THERE are few social concepts more deeply in need of critical analysis at the present time than the concept of Property. This is true for two reasons. In the first place, the concept has long since, like coin of the realm, become accepted at its face value. The ordinary person has no more understanding of the intricate social, psychological and ethical relations involved in the concept than he has of the subtle connection between a gold standard and market supplies which is expressed by the fluctuating value of a silver dollar. Property is property. Everyone knows what the word means and so passes it on without question. In the second place, the conditions of the new social economy make it increasingly clear that the concept of property is undergoing more or less radical, though in large measure unnoticed changes. Much of the confusion in our contemporary economic and legal thought is due to the fact that we still give conscious adherence to the traditional meanings of property while, in our unconscious practice, we have already passed beyond those meanings. The essential need, therefore, with regard to this fundamental concept is clarification of thought. It will doubtless not be deemed superfluous then, if, in the following pages, we attempt a careful analysis of this crucial, much used and much abused concept.

I.

In a primary sense, as Aristotle showed, property is a need. The possibility of a planful existence depends upon the power to control certain factors in the external order. If, for example, a man is to hunt successfully, he must at least be secure against the taking from him by any chance comer of his arrow or gun. His weapon must be "his"

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for relatively permanent control. Where there is no property in this sense, life is apparently reduced to a bare immediacy of fleeting controls, the life of the very low animal.

There will be no quarrel with such a view. Even the communisms have seen fit to provide for relatively extended, in some cases even permanent controls of external factors. A tool, a garment, a dwelling house, a plot of ground, is an extension of personality. Each of these, if it is to be a fruitful extension, must be organized in a way that gathers up and holds past powers in the service of future possibilities.

Difference of opinion arises only when a right of control justified on the ground of extension of personality and fruitful use is enlarged into a right of control irrespective of relation to personality or use. Property in the fullest sense is a right of control without specification as to manner of use. What makes a thing property is that it is one's *own*. One may smash it or burn it; one may put it away or use it as one sees fit. It is nobody's business but one's own what one does with one's own. If we seek a justification for this type of unrestricted control, we have it in the thought that in as far as a man puts his labor into a thing, he makes it part of himself. As he has a right to the disposal of himself, so he has a like right with regard to the things which through his labor he incorporates into himself.

In this conception of incorporating, through one's labor, parts of the external world into one's self, we have one of the two root ideas of property. In modern days this idea would be expressed by saying that a man has a fundamental right to what he "earns." Since he has put himself into his work, he has made the product part of himself; and it is against nature for a man to be alienated from himself. Hence his right to his property is in fact an inalienable right. Alienation would mean robbery, the sundering of life from itself. Hence he who takes away property is in a sense a destroyer of the sacred unity of life.

If we were discussing conditions in a primitive society

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there would be little occasion to find cause for quarrel with such a conception of property. The savage tears off a limb of the tree and with laborious patience fashions it into a bow. He has undoubtedly "earned" the product. In all propriety it "belongs" to him. As soon, however, as we pass from primitive society, difficulties disclose themselves; until in the present order of things it becomes less and less possible to state with any approach to accuracy what a man has "earned." If we content ourselves with identifying "what he has earned" with what he has actually been enabled, by one legal means or another, to *possess*, the error of such identification is obvious. But herein lies precisely the crucial difficulty of our modern attitude toward property. Property is what a man *legally possesses*. But a man may legally possess what he has in nowise *earned*.

Hence a dilemma. Either unearned property, because it is unearned, is unjustified and should be subject to summary confiscation; or there is another principle in terms of which the legal, if not indeed the moral, right to property is justified. The principle in question does undoubtedly exist and that by reason of a very perplexing fact in our economic life. As we well know, there are certain gross forms of unearned wealth—overt theft, for example—which society has long since made legally reprehensible. The majority of us are innocent of the possession of such forms of unearned wealth. On the other hand, there is scarcely a person who accumulates wealth beyond the subsistence needs who is not guilty (if guilt be here the proper word) of the possession of subtle, scarce-detectable forms of unearned wealth. The story of modern economics is the story of "rent," that is, of unearned surplus due to scarcity conditions of one kind or another. If the honest citizen, in short, crying out against the more obvious forms of unearned wealth, examines his own income, he will find traces here and there of wealth that has flowed in by reason of some peculiar natural advantage or other—location or ability; wealth that he has not fully "earned." It is

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so with most incomes. The factor of unearned surplus in brief weaves subtle and intricate threads through the whole of the social fabric. These baleful threads can be detected and removed only with a subtlety and intricacy matching their own. This, obviously, is to be accomplished, not by isolated individual attacks upon individual "unearned" possessions, but by the infinitely careful and complex application of social and economic devices adequate to the task.

We come then to a deep reaching social principle. The possessions that have been legalized into property, have apparently been legalized not by reason of any inherent sacredness in the mere act or fact of possession. The legalizing at the best has rather been a matter of social expediency. So subtle and devious are the ways of unearned surplus that society has as yet not been able to invent means for their complete detection and elimination. To have granted the right of detection and elimination to individuals would have been to let loose forces of antagonism and hatred that would have disrupted society. There has, then, been but one alternative for society; until the social mind can itself organize measures for the detection and elimination of unearned surplus, all actual possession that is not grossly and overtly theft, must perforce, for the sake of social peace, be sealed with legal approval. The alternative, apparently, is not a counsel of perfection; it is at best a counsel of social expediency.

In view of this principle, then, the ordinary "legal" right of possession holds only in so far as society has not yet discovered means of successfully discriminating between earned and unearned possession. Actual possession, therefore, instead of being "sacred," a "vested right" grounded in the eternal order of things, is but a temporary tenure subject to revocation or modification at the moment when the social insight shall have reached the point of satisfactorily discriminating between property earned and unearned.[1]

[1] In view of these considerations, note how inept is the statement of Monsignor Parkinson, made at the recent Roman Catholic Congress in England

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II.

From the point of view above taken, then, there are apparently three reasons for justifying private property. First, private property of some sort is necessary as an instrument of personality; second, private property is justified in so far as it is earned; third, private property is justified, whether earned or not, in so far as society, for reasons of expediency, has placed upon it a legal approval. Obviously, the two last are derivatives of the first and subordinate to it. If the holding of unrestricted control were everywhere of evil import for a man's life, even the "mixing of his labor" would not long justify his retention of such control. Again, if the legalizing of unearned possession were obviously disastrous to social health it would not long be tolerated. It is because, in the absence of secure economic devices, the legalizing of such "unearned" possessions is apparently less full of dangers to the social welfare than the exposure of them to individual assaults that such legalizing has been justified. In short, the present property system, bad as it is, has seemed to serve in some measure the interests of personality.

We turn then to what is in essence the deepest of all the justifications of property, the fact that property serves as a fundamental and indispensable instrument of personality. I pass over the contrasted view which holds that the entire property system is due to the avarice of men (God having created the world for common enjoyment). Such a view would of course deny that private property is an instrument essential to the welfare of personality. I pass it over for the reason that a theory completely communistic has no serious importance for modern discussion. The point of view is well-nigh universal to-day that some manner of permanent, exclusive control of external factors is necessary to the organization and effective execution of

(reported in *Current Opinion* for October): "Private property with us is an immutable right, and not merely a right of some vague kind, but a personal and a natural right."

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individual life. If now this point of view is justified, the important corollary follows *that wherever property serves as an instrument to suppress or injure personality it loses its fundamental justification and has no inherent right to exist.*

If the principle above stated and its corollary are accepted, it follows that the chief function of a social order is to discover and correct all those conditions under which property tends to go counter to the welfare of personality. Society, to be sure, has two questions to ask about property. The first question is, how much of what is legally possessed is earned and how much unearned. This is a question as to the intrinsic right to possess. The second question is, earned or unearned, in how far does the possession of this or that property advance or hinder personality. This is a question as to the personal and social effects of property. Obviously, while society must wait long before it is able to say with exactitude how much of property is *intrinsically deserved*, it is even now able without great difficulty to estimate the effects upon personal and social welfare of certain types and conditions of property ownership. It is therefore along this second line that social action regarding property is in the main to be taken.

The conditions of ownership which bear upon personal and social welfare may be summed under two heads: (1) The condition in which property is in excess of needs; (2) The condition in which property is below the level of needs;— property in excess and property in defect.

III.

1. Property in excess. Property in excess assumes the three forms of property for use—property employed for personal or family consumption; property for control—property employed in one way or another for the prosecution of business enterprise;[1] and property for benevolence.

As to the first, all property for use which is in excess of

[1] Hobhouse, L. T.: *The Historical Evolution of Property, in Fact and Idea;* p. 9; in the volume, *Property: its Duties and Rights;* Macmillan and Company, 1913.

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fundamental needs (food, clothes, shelter, education, healthful recreation, social intercourse, culture) is *ipso facto* anti-personal and anti-social. It goes without saying that a man with an income beyond needs, who spends this income for luxuries or vices, injures himself in health and character. But the injury goes farther. In one sense, to be sure, all expenditure for luxuries or vices is a stimulus to production and so is apparently of economic value. But it is not difficult to show that the stimulus is an unhealthy one; that a far more effective and fruitful stimulus is thereby made impossible. As economists have long since shown, could the increment beyond needs be added to the income of workers all along the line, an increased demand would thereby be stimulated for the kinds of goods which make for solid efficiency and productive health. Surplus income, in diverting wealth from the channels of healthy demand, is therefore essentially anti-social.

It becomes consequently the business of a sound social economy to devise measures for the elimination, eventually if not immediately, of such unfruitful surplus for use. In view of this obligation the device of a tax progressively graduated to meet increasing income is wholly justified. Specifically, such a tax has the double justification (1) that as incomes increase the proportion of wealth that is probably unearned increases; but (2) it is justified still more fundamentally by the fact just stated that a surplus of property for use is, by reason of the misdirection of productive stimulus, anti-social, and therefore goes counter to the principle that property is to be justified only in so far as it is a true instrument of personality.

This very situation will indicate how important it is that the principle just expressed be grasped in all its rigor. On all hands the complaint is heard: If a man has *earned* his money has he not a *right* to it? Waiving for a moment the argument that much of what is claimed to be earned is in fact unearned, the answer is decisive: Property, even earned property, has no rights *a priori*. If we are correct in our statement of the fundamental justification of prop-

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erty, property has its right to exist only as it serves the true ends of personality. Precisely then in so far as it goes counter to those ends it ceases of its right. Whether, therefore, property be earned or unearned, the deeper question remains as to its relation to human welfare. Where that relation is distinctly inimical, as in the case of income beyond needs, the right lies with the Social Will to effect its lawful transfer.

This right of society to alienate even earned property is the more evident when it is remembered that "earning" is a term wholly relative to social organization. The very possibility of earning depends upon the maintenance of the public peace, upon roads, streets, public sanitation, law, etc. In modern states it depends, too, upon a widely diffused educational system. In addition to this, the so-called "earner" earns by reason of access to a vast social inheritance—the commercial and industrial principles of organization, the prevalent ideas of life and the world, the mechanical and social devices, the sciences and cultures. To hold that *he* earns, of his own unaided strength, is the height of the preposterous. Society gives; and if, in its wisdom, society takes away, it is for the individual to acquiesce in an ordering of life that of necessity passes beyond the narrowly centered desires of the single life.

IV.

An equal, if not a greater concern of the organized Social Will, however, is with surplus property for control. The reason for this is that property for control has wide and usually quite unconsidered effect upon lives beyond the individual who controls. The owner of shares in a coal mine, for example, has so much mastery over the lives of employees and of consuming public. He may be a perfectly frugal administrator of his property for use; that is, he may be a respectable, law-abiding, God-fearing private citizen; yet either by reason of his unconcern, or ignorance, or poor social insight, he may so administer his property for control as to make wretched the lives of thousands of

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workers. The situation is the more serious in that most property for control is held in such a way as to make effective direction of control on the part of the individual owner impossible. The "widows and orphans" and the small "savers" who own shares in various industrial enterprises delegate their power to men whom they do not know and of whose policies they have not the remotest conception. Their power of control is to them represented by what comes out of the concern in the way of dividends; not by what goes into it in the way of social insight and humane consideration.

Such control therefore is fraught with grave danger to personality precisely in so far as it is irresponsible. Obviously the function of the social order in this case is to organize devices whereby economic mastery may be shorn of its power to injure life. I need not here recount the various ways, governmental and otherwise, in which society is attempting to do this—through labor organizations, wage legislation, laws governing combinations, disability insurance, sanitary regulations, social ownership of economic enterprises, social control of public services. Our interest is here wholly in the principle which justifies this procedure—the principle that property is justified only in so far as it serves personality; and that any type of mastery which threatens personal welfare must accordingly be subjected to rigorous correction and control.

V.

The third form of surplus property is property for benevolence. A society in which all the problems of maladjustment and maldirection of life were solved or collectively provided for would obviously stand in no need of private surpluses devoted to benevolence. Such a perfect social order, however, will doubtless not soon, if ever, be realized. It follows, then, that while, as society grows in socializing power, maladjustment will be increasingly corrected and mischance provided against, there will always remain a wavering "border line" of unfortunate situations. The

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very fact that society is a growing order of life means that with each stage of growth new problems disclose themselves which need time for their solution.

A sound society therefore will require of its members, as a part of their normal citizen-obligation, the setting aside of a proportion of their incomes for social relief. As society grows more complex, the funds thus set aside will be more and more socialized in organization and operation. In a simple society the direct giving to the distressed person is the normally successful mode of action. In a complex society, direct giving becomes less and less possible. The causes of mischance—tuberculosis, accident, unemployment, child labor, etc.,—ramify so widely that they can be attacked successfully only through large social means. Hence the growing need in modern society for the "pooling" of individual relief resources, for the gathering of permanent "funds" which may be applied widely and thoroughly to the correction of distressful situations.

VI.

(2) So much for property in excess of needs. We turn now to the obligations of the social order with regard to property which is below the level of needs. It is obvious, since property is assumed to be an indispensable instrument of personality, that a sound society must take full precaution against the loss to any of its members of such an indispensable instrument. To a certain extent indeed a sound society will require of its members that they build for themselves bulwarks against economic disaster. Yet there are certain eventualities against which individuals are really powerless to guard. A workman who is the support of a family is smitten with tuberculosis. He is ordered to cease work, to eat nourishing food, to remove to a more suitable climate. The property which is here an indispensable instrument not only to the man's personality but to his life is in a double sense lacking, by reason (1) of his small wage; and (2) of his enforced idleness. A sound society is obligated in some manner to guard

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such a citizen against so debilitating a depletion of property power. It is a significant commentary upon our present social economy that a conclusion such as this, which is so patent that it scarce needs mention, is, in our practical social arrangements almost wholly unconsidered. It indicates how woefully our social mechanics lag behind our social theoretics; and it causes us to look with some dubious discontent upon those institutions of "government" and "law" as well as of "business" to whose semi-archaic structure and processes we must still perforce subject ourselves. Again, a workman is shorn of his limbs and so reduced to economic helplessness. A sound society will not contemplate with any complacency that such a man may, through some technicality of legal procedure, be left for a life-time without support. Here again is an eventuality against which the individual, by his own unaided power, could have taken no adequate precaution. In all such cases the resultant burden should in whole or part be socially borne.

In these two cases a new principle discloses itself which tends to modify the rigor of one of the statements made above. Access to property is justified not only on the ground that it is earned, but more fundamentally on the ground that it is *needed.* A tuberculous man has a fundamental need for which there is in him no adequate earning power. In the absence of earning power the presence of the need itself justifies the access to property-right.

If we accept this view, a whole vista of social obligations opens before us. Wherever *fundamental needs* exist a sound society is obligated to guarantee the security of those needs, provided they are not attainable through individual effort. Most fundamental of all needs for adult life is access to productive labor, which is itself access to a form of property-right. If employment is in many cases not possible, the obligation is upon society to devise means whereby unemployment or the effects of unemployment may be made impossible. In the question how this is to be done—whether by unemployment insurance or public

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labor bureaus or public ownership—we are not at present interested. It is the principle involved which concerns us, the principle that access to employment (property-power) is an indispensable need and must in a sound society be adequately met. If the point is raised that employment is best left to individual initiative, the answer is easily forthcoming that unemployment is in large measure not within individual control. It is therefore, like serious disease or accident, one of the eventualities against which society, by social insurance or otherwise, must guard the individual.

This principle of "socializing burdens"[1] is therefore seen to be imperative in a thoroughly moralized society. Obviously it goes directly counter to that long regnant principle that property power shall not accrue to the individual save through his own economic efforts or through individual gift or bequest.

But so likewise, the principle of "socializing advantages" is imperative, advantages, that is, that are normally beyond the power of individual attainment. An essential need of life is such a training of mind and body as fits the individual for fullest participation in the work of his kind. A rudimentary training might well be secured by the resources of the individual; but obviously no educational guidance commensurate with the full possibilities of human life could thus be obtained. Here again, the individual access to property is too limited to fulfill the fundamental need, and the obligation is upon the social order, through its wider co-operative resources, to realize the need.

Such an access, be it noted, is simply another form of property power. The individual who has access to educational equipment and guidance from childhood through the university years has an opportunity equivalent to thousands of dollars of private property power. In this sense the socialization of advantages (as well as of burdens) while not overtly, is in fact an addition to the income

[1] Patten, S. N.: *The New Basis of Civilization*, Chap. IV. (Macmillan).

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power of the individual. This fact must be remembered when the project (usually so hastily misconceived) to equalize incomes is broached. To socialize an advantage, like education or recreation, is by just so much to equalize incomes. The more fully therefore a society has organized itself in co-operative burden-bearing and advantage-rendering, by precisely so much has it advanced toward the equalization of incomes. It is not difficult to see also that as the fundamental needs are increasingly socialized, the actual money income of the individual becomes of less and less real importance.

We have mentioned but one advantage-need capable of socialization; but the reader will readily call up a host of others. Passing from the ordinary socialized advantages of streets and sewers and public lights, postal service, health inspection, policing, etc.—advantages which unaided individuals cannot secure—we note the more recent additions to the list of socialized advantages in recreation and culture facilities. For most men a private park or golf links or even a tennis court is out of the question, while the possession of a great orchestra or laboratory or art gallery is something to be dreamed of but not realized. All these however represent fundamental recreational and cultural needs, as indispensable in their way to a fully equipped life as food or shelter. In the case of these, as of education, modern society is noting its essential obligation and is providing access as full and free as if the individuals granted the privilege were in effect possessed of incomes commensurate with the advantages they receive. Hence in these cases, as in the case of disasters, where there is the essential income-need, there is increasing recognition on the part of civilized society that such income-need must be adequately and ungrudgingly met. The right of every fundamental life-need to fulfilment, in short, is coming to be recognized as absolute; and the social order is condemned when, either from indifference or perverseness, it permits a single such need to go unrealized.

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Summing up the analysis then, we may say that with respect to property a twofold obligation rests upon society: First, to detect the degree of intrinsic right to property on the part of individuals; second, to detect the degree of benefit or injury wrought by certain conditions of property ownership. We have confined ourselves in this paper wholly to the second, apparently more fruitful obligation. In pursuing our analysis, we have found the specific obligations of society to be fourfold: First, to guard against surplus property for use; second, to guard against the misdirection of surplus property for control; third, to socialize such casualties as the individual cannot normally provide against; fourth, to socialize such fundamental advantages as the individual cannot unaided achieve.

The analysis leaves us with private property as a fundamental institution, but with private property so linked with social purpose and social operation as to be indeed far removed from the crass individualism of the long regnant conception.

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LAW AND OTHER FIELDS OF KNOWLEDGE.

ALBERT KOCOUREK.

THE professional lawyer stands far behind the professional philosopher in vision of the relation of modern law, in some of its most important ideas and presuppositions, to other fields of knowledge. Such has been the situation in the ages of gold, of silver, and of the other metals, both in law and philosophy; and such is the situation to-day. The books on philosophy of law commonly have been composed not by jurists but by philosophers. This fact is not an abnormal one, and if it bears the appearance of a reversal of what seems the natural order of things—that philosophies of law should be constructed by lawyers—it is readily explainable on the same ground that writers of text-books of the law are rarely efficient trial lawyers, that great composers of music are not usually virtuosi, and that the creators of verbal imagery usually lead very unimaginative lives.

From the lawyer's side, the comfortable attitude that the law is self-sufficient to furnish all the postulates and demonstrations of its operation, makes quite impossible any capacity to see beyond the complex, technical fences of legal rules. Assuredly, one may be a very competent applier of wall-paper without being charged with the vice of Quietism, and without feeling any need of the higher mathematics, crystallography, or the Greek poets. Likewise, one may be an adroit applier of legal rules and so long as he accepts the political theory of law, which, in effect, makes justice a category created by the state, he will require no assistance from philosophy or the sciences either. However, the suspicion is growing in some quarters that justice is not made by political authority or fiat, but that it exists as a standard outside of legal rules which are only instruments for its more or less perfect realization.

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The difficulty, any longer of identifying justice with legal rules as excretions of the state organism, is greatly increased when the discovery is made by legal science that the larger part of the activities of the state in the administration of justice are not founded on antecedent legal rules or formulas, but are essentially discretionary.

Within this field of discretion, or judicial freedom unlimited by predetermined rule, the judge may act under the widest possible range of motive and influence; and it is clear that the order and succession of juridical events must be governed by factors which no legal system can entirely supply. In such a case two methods are possible.

First, the truism (which unfortunately will need to be stated again and again before it is either understood or accepted) may be openly acknowledged, that the field of law lies in the domain of the social sciences; and that it does not exist simply in, of, and for itself, but that it is a means for the accomplishment of a social mission. To say, in this connection of ideas, that the law deals with problems which are also treated by ethics, politics, and economics, is to violate the canon that the self-evident is not to be expressed; but yet it is just such self-evident propositions which legal theory entirely ignores. It is one of the most interesting facts of human psychology to see how the great jurist Jhering, after writing the torso of his "Spirit of Roman Law," naïvely admits that he was struck by the notion of purpose in law. "Once this question came before me, he says, "I was no longer able to avoid it. . . . It was the sphinx . . . and I must solve its riddle if I would regain my scientific peace of mind." The psychologist who understands the painful evolution of human ideas will find here a common-place illustration, which can be duplicated in every other science; for others, it will seem inexplicable that it was necessary to proclaim the notion of purpose in law either as an individual or a world discovery; but yet the discovery is one which will be repeated more than once before the last lawyer is found who thinks and acts in law apart from all other learning.

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In pointing out the connection between the law and social science, it must be noticed that there are for this purpose two classes of legal rules and likewise two classes of juridical facts, classified in the language of the ethicist as (1) indifferent, and (2) involving a value. In fixing the liability of a man who puts his name on the back of a promissory note, it is a matter of indifference what that liability is determined to be, assuming that a rule is legislatively constructed. The law here has only the function of creating certainty in a matter where a definite legal rule is necessary. But when, for example, the law deals with the subject of liability without fault, it enters the sphere of values. Certainty here is also desirable, and sometimes necessary; but, in arriving at certainty, there is an unavoidable conflict of ends which goes far beyond anything within the reach of legal science standing alone. What is indifferent only may well be treated by legal science independently, but yet not in complete independence; since what is expedient in such a case, must rest on the combined facts of social life. But what touches a value (and the greater part of legal rules perhaps fall within this class) cannot be determined by law once and for all. Such inquiries must submit to the flow of evolution, and be governed by the unity of the sciences. The law itself cannot, while asserting its authority, determine the truth of what may be profitably crystallized into law in that which concerns a value. Where it attempts inconsiderately to impose its brute force in a realm of ideas which in their nature are subject to the restless flux of life, it soon becomes apparent that it has failed in its social purpose.

The second method which may be adopted, and the one which is actually employed, is to disregard the law as a social science, and to seek to find within the law itself, as a closed vehicle of ideas and tools of reasoning, the solutions to meet the necessities of legal development in the wide province of discretion. The favorite instrument is analogy. New cases are decided by a "parity of reasoning" from old

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cases. This process may lead to the worst forms of conceptual manipulation; especially if the standard of comparison from which the analogy is drawn is deficient in its treatment of values, which makes a purely artificial and external application of the analogy very probable. In any event, used mechanically, it is likely to be an unsatisfactory instrument either from the point of view of pure logic, legal science, or the accepted views of justice. What it lacks in scientific precision will be supplied by the very fortuitous element of the psychological history of the individual or individuals invested for the time being with the judicial power.

While the lawyer at the bar may, and, indeed, must take account of the anarchic element of hazard which thrives luxuriantly within the free play of discretion, yet it is a factor which he never seeks to control by an appeal to the external sciences. His efforts are traditionally confined within a narrow strait-jacket not only of inherited methods of technical speech, but also of inherited ideas of other fields of knowledge where they touch the law. Criminal law is the classical point of contact between law and philosophy, but yet whether an offender is to go on probation or be confined indefinitely in a penitentiary will, in practice, be decided by factors which are not discussed either in law-books or works on criminal science. The law is saturated with rules which represent the lawyer's idea of the probabilities of human action, and of the processes of the human mind; but, yet, under the dominion of the conservatism which has ever characterized the legal profession, it would never suggest itself to any lawyer, in his use of these rules, to look to modern psychology against the system of psychology established in the law.

An examination of any legal system will readily disclose the large interest of other sciences in the construction of legal rules. That the fact is not at once recognized is due to the circumstance that the relation of these rules to the sciences of nature and mind is usually cloaked by the appli-

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cation, and by the form of statement.[1] An instance may be taken at random. Thus, it is said by the Illinois Supreme Court (quoting from the first case of a series in recent advance sheets) that "depravity of character and abandoned habits are not in themselves evidence of insanity; neither is the commission of an unnatural or atrocious crime necessarily such evidence." The authority given for this proposition is not reference works on insanity, or expert testimony, but other reported decisions. It is not, of course, intended by this illustration to suggest whether this somewhat cautiously guarded rule is sound or unsound, much less to say that it was not justly applied, but to direct attention by an obvious example that the law does assume to legislate in spheres not its own. It is believed, also, that, on the whole, the administration of justice, so far as it is predicated on what legitimately belongs to other departments of science, and assuming, also, as must be the case, that many of such rules do not represent the present state of knowledge, is reasonably efficient in its actual results, and cannot be said to be so far out of touch with the external world as to make it expedient or necessary to reconstruct the entire edifice of the law in the light of modern knowledge. Nor, on the other hand, is it intended to be implied that the law should remain indifferent to the activities, the facts, and the experience of life, after the fashion of the legislative body which may turn back the hands of the clock and extend the legislative day in defiance of the revolutions of the earth.

The law is a tyrant over the sciences, and its position toward philosophy is simply that such a thing does not exist. This attitude calls to mind a story of Mr. Depew who, when president of the New York Central Railroad, attempted to convince a stubborn conductor, an enthusiastic Democrat, that a certain political measure proposed in one of the platforms of the party, was against

[1] The large and important field of presumptions, especially, is governed by judicially constructed psychology, economics, and unverified statistical generalizations.

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the Law of Supply and Demand. The conductor, with the same sort of faith in the absolute efficacy of legislation, which is frequently shown by legislators and their constituents, exclaimed, "When the Democratic ticket is elected we'll repeal that law!" In the application of law with the prevalent belief that decisions can be forced out of statutes as with a hydraulic press, as Professor Ehrlich puts it, and, under the retarding illusion fostered by the "phonograph theory" of precedent, that legal systems are complete warehouses of information in all legal concerns, where one has only to look to find what he wants, the fields of non legal knowledge will find it hard to co-operate with the lawyer. Truly, the law can not throw out of the window all that it has accumulated in the process of centuries and rush with open arms to the friendly embrace of the ethicist, the economist, the psychologist, and the philosopher who can only greet him with other sets of hypotheses less authoritative than his own. It is rather to be expected that the lawyer will strive to maintain his traditional conservatism.

A period of transition is always painful, and changes are frequent subverters of logic. The lawyer trained to reason with rules and ideas generated in the law itself will not readily adapt himself to the "new thought" developed in legal decisions of recent years. A ten hour limitation of labor for women will appear to him as just as much of an interference with liberty of contract as an eight hour limitation for women. There is force in the argument that law is for the courts and morals for the legislature; but not as much force as the lawyer has been accustomed to believe. It might be hoped (but the hope will be vain) that a proper balance of action would be found without the turmoil promised by the present movement, to readjust systems of law based upon many ancient theories of social science, applied in the law, to the clamoring ideas of the age. No greater good could be attained than that the lawyer and the social philosopher should be able to agree how

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these adjustments are to be brought about; and not only these adjustments but all future adjustments.

The dependence on or, less controversially, the relation of law to, the social sciences is more clear and more extended in the domain of direct law-making than in the application of law; and here there is less opposition or denial of this connection. Yet the results are hardly worth mentioning. Every legislator thinks himself competent to regulate the whole world, and he has not discovered that he has not even learned how to draft a statute in scientific form. It will therefore be long before he learns that various sciences have much to say about the content of statutes. The social philosopher has sought an alliance with the lawyer rather than the legislator, not for the reason that the lawyer is more ready than the legislator to discuss legal problems as social problems (for the contrary would seem to be nearer the truth), but because the lawyer's profession is one of temporal stability. A lawyer is a lawyer for life. The legislator is a legislator for a day and soon passes into obscurity. A benevolent despot doubtless would seek out the man of science, but a popular representative too often has problems of individual welfare which cast a shade over the larger outlines of legislative policy. A further reason for such an alliance is that eventually the compromises arrived at will slowly penetrate the social fabric and in the end contribute in the direct making of law.

While the dependence of law in its application on other sciences is less clearly shown than in the direct exercise of legislative policy, nevertheless in the application of law, a creative effort is as necessary as in direct legislation; but the sources of these activities are different. The courts feel themselves far more circumscribed than the legislator; and, theoretically, it is the effort of the courts to make the application of law conform in detail with the architecture of the legal system. Isolated decisions are like the laying of bricks into a wall, the plan of which, theoretically, is already made; and it is thought that if each workman were permitted, himself, to be an architect, the unity of the con-

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struction would be impaired. The error of this self-effacement lies in assuming that such a plan ever was or could be formulated in advance in any field of human activity. It is the task of philosophy to show that the plan of the law is a part of the plan of life, and of the whole of reality, and that its outlines are not presented to us as a fixed and rigid pattern, but, that, on the contrary, they represent a dissolving view in which all human activities including no less those in the domain of law participate.

The lawyer excuses himself from any contact with the contagion of philosophy on the ground that he thinks concretely, and that he is not prepared, and that it is incompatible with a science which he believes to be based on fixed constructions, to undertake imaginary flights into an unknown world. He readily admits that the law does after a fashion draw upon other sciences, but only in a sense of superiority and domination. For example, the psychologist may be called as an expert witness, that is to say, if he is an alienist; and it is itself a rule of law that the judge knows a great variety of scientific and historical facts. Science is admitted into the sanctuary of the law only under the safeguard of an oath. The scientist will be heard to swear to his science, as any other witness *i. e.*, to establish other facts, but never for the purpose of constructing legal rules. Here, and in all other fields of science, the lawgiver is so supreme that he may and does reject all science and puts in its place systems of science entirely of his own construction.

One of the unnecessary difficulties which the lawyer is likely to make for himself in coming to a consideration of the relation of law to other learning, is that if the law is to permit any contact with the outside sciences except through the witness-chair, it would be necessary to incorporate into the study of law a large number of other disciplines—one writer humorously mentions even forestry and mineralogy—so that, in the end, the law would be too extensive to be learned within the span of a life-time. Logicians doubtless have an appropriate label for this kind of fallacy; but still

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a difficulty does not obliterate a necessity. The legislator may never be a mineralogist, but, notwithstanding, he must legislate on mines. He has the choice of drawing on his own information or the information of others, but he can in no event disregard the topic of mining as one foreign to the law in any aspect. The point of the matter is not that the traditional attitude of the law in regarding itself as self contained is wholly wrong, but that this independence may be and commonly is over-emphasized. This is well illustrated by the position taken by the English judge who denounced the promissory note as an invention of the goldsmiths of Lombard Street, unknown to the law. The cloistered preconceptions of the bench for a moment stopped the stream of commercial invention, but only for a moment.

Summarizing in a word the views expressed and implied, it seems to be clear that the law comes into contact with the other sciences and especially ethics, politics, economics, and psychology in all species of law-making, *i. e.*, judicial creation, destruction, and substitution of law, spurious interpretation, and particularly in direct law-making by the legislature. For an understanding of the teleology of law, the ultimate notion of legal rules, and the meaning of legal history, resort must be had even to the misty heights of metaphysics. It is conceded that the primary function of the legal workman is to become efficient in the certainties of legal science, the focus of legal problems; but it is also submitted that the marginal problems, and the ultimate reality of legal science lie within the sphere of the unity of the sciences, and the province of metaphysics, where the lawyer may profitably think and reason in common with the experts in social science and the philosopher.

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WHY SHOULD LAW AND PHILOSOPHY GET TOGETHER?

JAMES H. TUFTS.

WHY should the lawyer and the philosopher get together? Why should it be supposed that former readers of the JOURNAL should be interested in principles of law, and why should lawyers be expected to read a Journal of Ethics?

It is quite possible that each class of readers may feel some repugnance to the mingling of the two subjects. The past readers of the JOURNAL, presumably more or less philosophical in tastes, may feel aggrieved when asked to master a new set of terms. They have become accustomed to the pure and practical reason of philosophy. Must they also master the legal rule of reason which seems to have difficulties for even the experts? Conversely lawyers for whom fictions have long been tame and gentle creatures and who never lose their way amid pleadings, rejoiners, and replications may find the vocabulary of intrinsic values strange and its distinctions curious.

But vocabularies can be mastered if it is worth while. When getting up a case the lawyer is not daunted though it demands technical terms of a new order. The ethical student ought not to shrink from the language in which the nation is governed. The vital question is whether there is so great a difference in purpose and methods as to make negligible for either side the value of mutual discussion. That there are many differences is obvious. One which is frequently cited is that law deals with what can properly be enforced upon others; ethics with what a man may set as his ideal or may prescribe to himself. This no doubt emerges sometimes when the social reformer seeks legislation or decisions which the lawyer disapproves or the courts refuse. Yet it is not, I think, the main barrier. For

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laws, as well as the individual conscience, may set ideals which all good citizens will live up to without any thought of compulsion. Humane employers may be quite ready to adopt the principle of workmen's compensation or of protection against dangerous machinery when it is formulated, although their individual consciences might have failed through lack of knowledge or imagination to set so good a standard. A more serious difference may appear to exist in the attitudes of the law and of ethics toward the fundamental concepts.

The lawyer must make his conceptions of fair and unfair, of obligations and rights, as definite and as fixed as practicable. Even if for purposes of the statute, as for those of railway classifications, "pigs is pigs" while "rabbits is dogs," adjustment can be made to the phraseology if it is uniform, though zoölogists might prefer a differentiation.

On the other hand the philosopher is reluctant to commit himself to a fixed concept. It is not merely because he would find his occupation gone if he got his concepts all made. He has come to believe that the growing points of concepts are the most significant for him. In the extremely abstract sciences like mathematics one may continue to be one and a straight line a straight line, though even here the mathematician would find growth of meaning. But an atom is no longer an atom for the physicist and value for the economist is no longer as it was in the Middle Ages a stable quality which every article possesses independent of demand and supply. Still more is it the case in ethics that the growth of intelligence compels constant effort toward reconstruction in our ideas, and that the very business of the ethicist is to criticize his present stock. For to recur to the meaning of fair competition, the conscientious man has always tried to be fair but what was fair yesterday may be so unfair to-day that the thoughtful mind feels the need of a new conception of fairness. In Greece two principles of fairness had emerged—that of equality for all citizens, and that of inequality proportioned to birth or wealth or virtue or natural ability—and

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these have in varying combinations maintained themselves till now. But they have not remained precisely the same. The equality of the eighteenth century, supposedly based on divine creation, was not just that of the Greek democracy based on free citizenship. The fairness of industrial or of national competition is not tested solely by the claims of what is due to wealth or to native ability, or to accident of position. The thought, likewise suggested in Greece, of regulation in the interest of an ideal social end hovers persistently in the background. And this ideal social end which shall include all the values on the one hand of evoking individual effort and on the other of making this effort helpful rather than destructive to others, we cannot as yet make clear because the end and means are so bound up together that they must be worked out step by step.

If then the work of the lawyer is to define fixed standards and that of the philosopher is to keep perpetually tinkering with his ideas it may seem that it is vain for either to learn from the other.

Yet even on this point the difference is not so absolute as the statements just made would indicate. In such a conception as that of the police power the Supreme Court of the United States has refused to make specific bounds. It pricks out lines on each side but leaves a considerable latitude within. It affirms that the law is a growing institution, not simply a bringing of cases under a fixed concept. Indeed every difficult decision almost inevitably leads a judge to rethink the meaning of the principles laid down in former decisions before he can say just how the new and marginal case is to be classed.

And on the other side it is equally evident that although the philosopher is vague, impatient of fixity and authority, this again is a question of emphasis. For the only basis for maintaining the *growth* of conceptions of fairness is a certain persistency of spirit and intention which enables us to use the same term without violence. The lawyer is more interested in bringing new cases under a principle laid down or a statute enacted. It may require a fiction; but if

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so, a fiction is often forthcoming. The philosopher is more interested in pointing out the shift in meaning which is required in the principle if we make it cover the new case. He insists that it is nonsense to assume that all men are equal before the law when in fact they are not. He queries whether due process of law is reasonably limited to the ideas of the eighteenth century. He believes the best way to make progress is by continually emphasizing what he calls truth, rather than fiction, forgetting perhaps that on occasion philosophy has put forth such "noble fictions" as the equality of men, and the absolute value of humanity.

So far as this difference in method goes I conceive that it really offers a reason for co-operation. It is worth while for the philosopher to face the issue of what his maxims must mean if made a universal law. It is valuable for him to translate his principles into rules—provided he does it as the scientist tests his hypotheses. It compels him as nothing else can to recognize the interdependence between individual and public standards of morality. And while it is not my task to point out possible advantages for the lawyer I believe the need of securing flexibility and orderly growth is widely recognized among leaders in the profession.

Let me speak frankly on one aspect of the present situation in American education and life. If law has been criticized in recent days because at times it places technical consistency above real justice; if its individualistic principles are challenged as inadequate for present needs; if there is a feeling that the courts are not only judicial bodies but legislative bodies as well, and in this capacity less responsible to public sentiment than other legislative bodies; at least no one denies or questions that law is a power; that it is the agency, even if imperfect, through which society regulates trade, industry, and family life, protects persons and property, and adjusts in peaceful fashion one's disputes. Because it is a power it attracts men of ability. It offers not merely pecuniary return but participation in the large interests and directive forces of the day.

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On the other hand, if ethics receives less criticism than law, is it certain that this is due to the superior character of ethics and philosophy? There is at least the possibility that ethics and philosophy are not criticised because, as was said of religion in England in the eighteenth century, they do no harm. At least it may be said that with some notable exceptions teachers of ethics have not exerted an influence upon the trend of events strong enough to challenge general attention. How far this is a professional and how far it is a personal matter might be hard to say. A personality like that of Fichte or Spencer will inevitably get a hearing. Conversely a profession which has dignity and influence will draw to itself great and ardent spirits. And of course it would be intolerable to speak as though ethical thinking and teaching were limited to professors or lecturers. Now, as in the days of Protagoras, all men are teachers of virtue and the authoritative voice is his who speaks for the enlightened and discerning conscience, whether on the bench, or the platform, from the pulpit or the chair, in the press or in the legislature. None the less the student and teacher of ethics ought fairly to covet his peculiar share of influence in the formation of public opinion and public policy. His specialization and that of law and the social sciences have taken from him the external occasions which made it natural for an Adam Smith or a Mill or a Sidgwick to speak to his generation in many fields. Fifty, or even twenty-five years ago, largely because it presented the great themes for which the student had been prepared by his religious training, the chair of philosophy exercised a commanding influence in college and university. It naturally appealed to strong men. To-day the educational shift to the social sciences, and the shift in public interest from religious to legal doctrines, have both tended to lessen the philosopher's power. Some of the profession have turned to logical problems, suggested by developments in the mathematical disciplines; others have been stimulated by the doctrine of evolution to metaphysical analysis. But it may be doubted whether either of

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these would make a general appeal apart from the brilliant personalities and charm of style which have aided in their exposition. For many the moral interest in some form is supreme, and when the moral interest throughout the country centers on legal problems moral philosophy is abstract if it does not seek to understand these.

And this brings us to the great reason why the student of ethics who considers almost any concrete problem is forced into the legal field. He cannot settle or even comprehend his questions without going there. How academic to consider fairness without knowing what theory organized society is now proceeding upon! How futile to study the ethics of the family without asking whether the great forces of society and of industry as regulated or exempted from regulation by society, are changing the structure which former ethical theory has presupposed. The scientific attitude of the day no less than the changing social order compels one to study the moral consciousness as reflecting the whole organization of our society, and this means our laws as well as our prophets. Charity is a notable example. Help to the poor has always been regarded as a moral duty—as "benevolence" rather than "justice". But with the present scientific temper it is as impossible simply to accept the intolerable load of poverty as a burden to be borne by a few benevolent persons, as it is to let the load lie where it falls. Such passive acceptance would often mean aiding injustice. We demand two things: First, a knowledge of the causes of poverty, second, a fairer distribution of such a proportion of the load as seems inevitable; and both of these carry us into law. For we cannot make a beginning in causes of poverty without encountering bad housing, unemployment, low wages, strikes, industrial accidents or occupational diseases, as well as the more individual causes,—such as intemperance or inadequate education. When now we seek to locate responsibility for these causes or ask what can be done, we encounter legal questions. Do we aim to correct bad housing? We are at once involved in the police power versus constitutional guaran-

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ties of private property. We hear of the constructive measures which Europe takes for municipal housing, co-operative housing, and are told in certain states that such things are unconstitutional.

We turn to unemployment. Nothing is more obvious than that such unemployment as even before the European war oppressed multitudes is largely due to causes over which the individual workman had no control and for which no individual thrift could provide adequate remedy. The causes of business depressions may be regarded as still imperfectly understood, but the obvious method of distributing the incidence of the burden is by some form of insurance. This takes us into the field of legislation and is almost certain to raise constitutional questions just as workmen's compensation for accidents has already raised them in an acute form.

And when we come to other causes of poverty—low wages, industrial disease, meagre education, feeble-mindedness—we are at once in the legal field. Society is at present familiar with the doctrine that the state should provide and require education. The questions are those of degree. Regulation of wages for women and minors is just appearing above the horizon and has yet to be thoroughly discussed. Regulation of wages for men in privately managed industry has not been attempted in America. Yet it is evident that those who are in immediate contact with the difficulties of maintaining healthful and decent family life in cities on the wages for unskilled labor prevalent on a competitive basis are going to raise the question. Pressure from the criminal courts, from charitable organizations, from schools, from political students, is bound to increase until we find ways to deal more capably with our twenty percent more or less who now need help, and this will mean legal as well as moral constructive thinking.

A new spirit, born of a larger, more intelligent sympathy, and of a scientific method already victorious in the laboratory, is among us. Whereas we accepted poverty, crime, vice, class-conflicts, and many other evils as matters of

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course, we now look for causes. And after causes come remedies. We are not frightened away even by the dogma that the cause for a given evil lies in human nature. For we are learning that human nature is partly an artificial product. Institutions make men as truly as men make institutions. The European War is at any rate deepening the conviction that it is time to think greatly, to undertake more seriously and with broader vision our task, to consider our institutions and our ideals in their interrelation.

All of us philosophers, social reformers, lawyers, statesmen have seen our problems too narrowly. We need to think in larger terms.

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SOCIAL IMMORTALITY.

JOHN E. BOODIN.

MAN'S conception of immortality varies with his racial development. Tribal life is dominated by tradition. There is little consciousness of individual creativeness. Customs and language grow unconsciously. No individual names are attached to early man's slow but epoch-making generalizations about life, nature, and the gods. The tribe alone is of consequence. It continues to live. The individual can live only by proxy. Immortality becomes, therefore, primarily a continuity of breed.

In the individualistic stage of man's development, when man's reason and conscience rise against antiquated traditions, or when he is called upon to choose between conflicting traditions; when, in any case, man must stand on his own feet and find the value of life in the deliverances of his inner experience—at this stage immortality must naturally be read in terms of the conservation of the values of the newly discovered personal life. In early Christianity, the kingdoms of this world, its laws and institutions, even the family, are conceived as of the earth earthy. The individual must save his own soul. The end of the world is at hand.

In the third stage, the conception of immortality is socialized. Man finds his meaning and salvation in the social community with its continuity of life and ideals. The kingdom of heaven has now become a kingdom to be progressively realized in this world. Loyalty to the community and sacrifice for its progress now become dominant motives. The immortality of the individual and of the social group of which he is a part are now recognized to be reciprocal. Man must find his life and joy in creative service for the community. Unlike tribal man he is not the mere slave of the community. But he recognizes in

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the community his own larger self. If he renounces himself, he does so freely for the good of the group. His self-realization is also the realization of the community. His aim is not so much self-emphasis as the interpreting and improvement of the group life of which he is a part; not so much individual salvation as to lose himself in service and friendship. Social creativeness now becomes the end of life.

This consciousness of the solidarity of life seems at any rate to be gaining ground. With it there is less emphasis of individual immortality. We do not seem much concerned about it except at funerals. Just what individual continuity can mean is hazy to us. We have abandoned the ghost doubles of our savage ancestors. The supposed indivisibility of the soul, which gave such assurance of continuity to an earlier generation of thinkers, is small comfort to us with the psychology of multiple selves before us. What unity there is of life seems to be a unity of purpose; and this unity is achieved in working with our fellows for the realization of an ideal. The ongoing of individual life we conceive in terms of tendency and character, rather than in terms of memory as our ancestors did. In some way, it would seem, the net results of life must be handed on. But these results we must conceive again in social terms—the capacity for friendship, for enjoyment of beauty, for discovery of truth. If in some way our having lived makes us more attuned to the better part of the universe; if, under whatever circumstances we may reappear, we shall know our spiritual kin (even if we don't recognize all our former blood relations) and shall be better able to work with them for the realization of ideals, we feel that life has been worth while.

To me, at any rate, it seems that the chief end of life is to socialize mind, to give it a spiritualized body, be that body language, art or institutions. Mind becomes immortal, at any rate, when it thus succeeds in embodying its significant ideals. To a large extent at least this is the only immortality which mind can have. For mind is not

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a static quantity. It continually oozes out, it grows into new forms, and the old forms are lost as such, unless they are incarnated into bodies of their own.

We have exaggerated the continuity of individual history. Rather than call our life mind, we might call it a series of more or less overlapping minds. It is not true that these minds interpenetrate absolutely. The old man does not own the mind of childhood and youth. Even though he may have some fragmentary memory of them, he looks back to them objectively. They are not he. The creations of these earlier minds lie outside his possibility and sympathy now. Sometimes he relies on objective records for even the existence of his earlier minds. And when he meets them, they seem strange to him, and often he even disowns them. Thus are our souls, within our personal history, ever passing into the past and ever being resurrected, sometimes against our wishes, and dragged into the light of day. Mind is not merely growth, as Bergson would have us think, but change and decay. The snowball may gather a great deal in the rolling, but it melts largely in the transit, if the day be long. If we continue to live forever, we may no more recognize our former selves than we recognize the amœba as a former stage in our evolution or remember even the nearest pre-existence if there is any such.

The only way, therefore, that we can save our soul from moment to moment, irrespective of whether there is indefinite personal continuity, is by social creativeness. We must give the momentary soul an individual habitat. It is true that somehow our life history develops and runs its span in connection with this fleshly envelopment, but this is at best a sieve and does not hold mind. It is a fragile and transient instrument. Mind lives and expresses itself more truly in the body which it creates for itself in the social texture of human history. The physiological body conceals far more than it reveals. How thin and transparent, on the other hand, is the spiritualized body of mind in the form of language or art. Even as the gauzy

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drapery reveals the form of a beautiful woman, so this created embodiment of soul reveals soul. And as the universal body of language is our mutual creation, it reveals mind with an immediacy that the fleshly body cannot give.

In our understanding and appreciation of creative activity, soul truly shares soul. Mind overlaps as the common section of two circles. In the words of John the Scot: "Whoever rises to pure understanding becomes that which he understands. We, while we discuss together, become one another. For, if I understand what you understand, I become your understanding, and in a certain unspeakable way I am made into you." The same mind is ours as was Euclid's, when we understand his geometry, whatever other psychological fringes there may be. The symbols of Euclid are the eternal body of Euclid's mind. And so in sharing the hypothesis, the melody, the poem, we enter into real communion with the creator's soul. Could we have seen his fleshly body, could we have shaken his hand, we might not have gotten his mind so intimately as we do in his work. How often have we not found it a disappointment and hindrance to true spiritual appreciation to know the biological man. And so we go back to the symphony or book. Mind really lives in the systems of symbols with their relations of meaning. It continues as embodied will, pent up energy, ready to connect with other minds fitted to enter into converse with it. It may be but a brief moment of the life history, but it lives here, here is its habitat. It is not a photographic copy or model, but the genuine creative will itself. Here at any rate is real immortality.

Soul, then, does not require a physiological organism as its habitat and expression. It may have a block of marble or a book as its body. Some years ago I wandered through room after room of imitative and lifeless casts in the Boston Art Museum. But at length I came upon a battered Greek statue with only the folds of the garment left intact. Here there was a will, a mind that spoke from every fragment, as live and real as when it originated over two thousand

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years ago. The marble was but its transparent body, the real individual soul is still there. For soul, when it rises to a stage worth saving, is meaning, purpose; and who saves the meaning saves the soul and who shares the meaning shares the soul.

The spiritualized body of mind has one great advantage over the biological body. It helps us to dissociate mind—the real man—from its animal associations. How near is God to brute in our human organism. How much there is that jars upon us in the paltry routine of the mortal life of even the greatest personalities. How close to the monkey and the dog the highest part of us lives in this physiological habitat. How unæsthetic and even degrading are many of the functions of this animal existence and in many aspects how below the wholesome innocence of the brute. Let the mind make itself its own body where its own dignity and beauty can shine.

Often the soul has no other habitat than the marble, the symphony, the book, the remembrance in the heart of others. If Homer, Phidias, Beethoven, have a continuous personal history in some unknown manner and climate, they may be quite as incapable of reproducing or even appreciating the soul of their master works as was the later Tolstoy incapable of appreciating "War and Peace" or "Anna Karénina." How often an author outgrows a book from his own point of view, even disowns his spiritual child, while the generations after him still look upon it as the climax of his creative career.

Sometimes the imprisoned mind of the creator is lost for generations, even to the social consciousness, yet when we do come upon Taylor's Theorem or Mendel's Law or Praxiteles' Hermes, how significant and real they are! What a renaissance when Greek culture connects again with Europe! Even though the temporal parent has passed beyond human ken, the statue, the prophetic book, the nugget of wisdom still speaks to us with an individual mind, independent of birth, time and circumstance. Just because it is a unique will, and not an abstraction, we dare

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not complete it when fragmentary. Schubert's "Unfinished Symphony" must remain unfinished.

How weird it is when some moment you find your own past soul looking at you from the letter or poem or treatise and know it not. I look at my own mind of fourteen as a stranger. Kant and Plato enter more truly into my mind now than what I call myself at fourteen. Should I come upon some old letters or lost bits of verse, this mind would be resurrected, but the chances are it would at best be a matter of curiosity with me. My mother seems to own it more truly than I. She has treasured it in her love in my absence. In her loyalty it has indeed survived, but I can no longer own it as myself. In the word of Rolland's Jean-Christophe: "For myself I bid the soul that was mine farewell. I cast it from me like an empty shell: Life is a succession of deaths and resurrections. We must die, Christophe, to be born again." Yet while we thus slough off our past selves we must not forget that they are important stages in the transformations of our spiritual life. Each stage, moreover, in normal development has its own beauty, and it does not always follow that the last stage is the best. But since the stages cannot be preserved in the history of the individual, since youth and old age cannot coexist, we must save them in some other way.

In his recent Ingersoll Lecture on Immortality,[1] Professor Palmer tells in his own exquisite manner how Shakespere hoped to save through his Sonnets what was most precious to him from the ravages of time. He wanted to rescue the beautiful youth, whom he loved, from "wasteful time," by engrafting him new into his verse, by translating him into the context of social meaning.

"Since brass, nor stone, nor earth, nor boundless sea,
But sad mortality o'ersways their power,
How with this rage shall beauty hold a plea,
Whose action is no stronger than a flower?

[1] "Intimations of Immortality in the Sonnets of Shakespere." Ingersoll Lecture, 1912, Houghton Mifflin Co.

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O, how shall summer's honey breath hold out
Against the wreckful siege of battering days,
When rocks impregnable are not so stout,
Nor gates of steel so strong, but Time decays?
O fearful meditation where, alack,
Shall Time's best jewel from Time's quest lie hid?
Or what strong hand can hold his swift foot back?
Or who his spoil of beauty can forbid,
O, none, unless this miracle have might,
That in black ink my love may still shine bright."

Thus Shakespere would give the beautiful youth a spiritual body and preserve the transient charm of innocence and spontaneity. Even in such fragile beauty, love somehow can find the eternally significant, that which ever constitutes "the marriage of true minds." In discovering the meaning of loyalty to beautiful youth and in fixing this in poetry, love triumphs over change.

"Let me not to the marriage of true minds
Admit impediments. Love is not love
Which alters when it alteration finds,
Or bends with the remover to remove;
O, no! it is an ever-fixed mark,
That looks on tempests and is never shaken,
It is the star to every wandering bark,
Whose worth's unknown, although his height be taken,
Love's not Time's fool, though rosy lips and cheeks
Within his bending sickle's compass come;
Love alters not with his brief hours and weeks,
But bears it out even to the edge of doom.
If this be error, and upon me proved,
I never writ, nor no man ever loved."

At least the eternity of love's loyalty to youth's spotless beauty can be put into verse. The youth may fall: time "delves parallels in beauty's brow," but the loyalty itself remains. And this loyalty Shakespere has indeed suc-

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ceeded in making immortal. Professor Palmer is right that Shakespere has not been able, if indeed he so intended, to make the lovely boy as such triumph over time. The physical flesh-colored boy must go. Not even his mind could be made immortal by the poet's magic because there is nothing about the boy's mind that is truly individual—no great thought or aspirations that mark him from other beautiful boys. Love alone has individuated him to satisfy its eternal longing. To give him physical definiteness or even a name would but impede the imagination and defeat the aim of the poet which is to kindle in us his love—not of a great mind—but of innocent beauty. It is Hegel's paradox over again that pure immediacy is universal. In making immortal this type of loyalty, perchance Shakespere's own personal loyalty in spite of sordid change (for the youth seems to become a victim of a low woman), the poet has been incomparably successful. The loyalty of youth is a loyalty of emotion and can only be kept alive by the eternal feeding of the emotion; and this Shakespere has done in the sonnets where "in black ink my love may still shine bright." It is a subtle task where only the infallible intuition of the great artist could have succeeded.

Can this transient beauty of innocent youth have any other immortality? If there is personal immortality, does it not mean change and growth and must not the beautiful boy pass into the deeper experiences of sin and triumph? We love the beautiful child as a beautiful child; and the mother may sometimes weep because she is going to lose her beautiful boy; but still we love the development of the boy, too. And normal personal life means just such promise of development where manhood supplants youth. Who would want the beautiful boy arrested and fixed? That would make him an immortal idiot. His only immortality as a beautiful boy, therefore, must be social, as love fixes him in memory or better still in art. But what it thus immortalizes is primarily the loyalty itself to such a type of beauty. We cannot stop the movement of life. This indeed would be violence to beauty itself. But we

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can seize the significance of each moment as a part of our social consciousness.

"Like as the waves make towards the pebbled shore,
So do our minutes hasten to their end;
Each changing place with that which goes before,
In sequent toil, all forwards do contend.
Nativity, once in the main of light,
Crawls to maturity, wherewith being crown'd,
Crooked eclipses 'gainst his glory fight,
And Time that gave doth now his gift confound.
Time doth transfix the flourish set on youth,
And delves the parallels in beauty's brow;
Feeds on the rarities of nature's truth,
And nothing stands but for his scythe to mow;
And yet to times in hope my verse shall stand,
Praising thy worth, despite his cruel hand."

His *own* mind Shakespere has succeeded in making immortal. Whatever immortality he may have now as a personal history, he has incarnated the series of beautiful moments of a long creative career into the social tissue of humanity. His soul shines through "the black ink," it warms our love, we share the real mind of the sweet singer of Avon, and that is probably more than he can do if his personal history still goes on.

The old Norsemen were right that a living power dwells in the constellation of the runes—more magic than the artificial one which they had in mind. Whoever has become acquainted with Plato's dialogues knows what subtle power they have to transform his thought. No one has come thoroughly under the spell of Plato without having become, perhaps unconsciously, his disciple. It is not a dead Plato, but a living soul with which he deals. The 'procession' from the mind of Plato is ever going on afresh, stimulating and subduing minds. Thus mind moves over periods of time as over distances of space. Plato's mind, the real Plato, is immortal. And Plato, in the variety and

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comprehensiveness of his contribution, seems to have sent forth his whole soul through the ages.

The Stoics distinguished between the Logos as unspoken thought, the inner psychical function, and as thought expressed in word and act.[1] This distinction caused much discussion when taken up into the theological thought of the Christian fathers and applied to the Father and Christ. The distinction is an artificial one at best. They were inclined to make being and its manifestation separate entities by personifying them, thus hampering the human mind for ages by a fanciful theology. But their intuition was wiser than their abstractions: Thought and expression go together. The existence of mind is inseparable from its procession into its objective expression. The "Word" as the expression of thought carries the living soul with it. The fulness of the mind overflows in the expression; and the mind expressed is mind of the original mind, "light of light, very God of very God, of one substance with the Father." In the golden sayings handed down, in the living tradition of the community, the early Christians, and the loyal followers in all ages, have recognized the soul of the Master, potent to comfort and help, to give inspiration and energy for the triumph of the cause. All conditions of men, poor and rich, ignorant and learned, have thus come to recognize the mind that was in Christ Jesus, which the loyal have also recognized as the mind of God.

So it seems that he who would save his soul must create. Only thus can the moment live after the material substance, and memory with it, have vanished like a dream. When one gets old and the evil days draw nigh and one fears the decay of one's faculties, then one begins to realize with almost tragic seriousness the importance of saving something from the Destroyer. But then as a rule it is too late to save anything worth while. Youth is the summer of creative growth, and the autumn at best is good for

[1] See Inge, Personal Idealism and Mysticism, p. 44.

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garnering the harvest and setting one's house in order. Even though nature here too may have its Indian Summer, it does not come unless the real summer of creative ambition has somehow preceded.

What we must cultivate, therefore, is the spirit of creativeness. This is the most effective way of saving the soul, not only of the individual, but the soul of the group as well. For the greater an individual is the more fully is he the focus of the people and the age whose psychic currents meet in him. Not only has Plato given us his own mind at various stages, but he has given us the genius of the Greek mind which carried him on and to which he in turn helped to give immortal direction. This direction continues as a fundamental theme in human history.

In the end progress must be measured by our contribution in the way of ideal creativeness. The passion for immortality measures the greatness alike of a people and an individual. Tremendous material resources and their manipulation are but instruments to the spirit's emancipation and expression. It is small credit to us that with our immense population and wealth we are lagging behind some of the smaller nations of Europe in genuine creative output. A thousand years from now the world will have far more interest in the fact that this nation produced Poe's lyrics and "The Scarlet Letter" than that it made possible the immense fortunes of Rockefeller and Carnegie. Let us not sacrifice soul to matter, the end to the means, the purpose to the instrument. Let us measure our resources in terms of the results in the way of truth, institutions, and beauty for the good and joy of all.

Ideal creativeness like love feeds on encouragement. Humanity probably never has lived up to its limit in this respect. The reason that creativeness has come in great pulses in human history, such as the great Greek period, the Augustan age, the Elizabethan age, is not due to greater capacity for creativeness in such periods, but to greater incentive—to an intense social consciousness of creativeness. Such epochs have been inspired by the conscious-

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ness that he that thinks a new thought, paints a new picture, creates a new melody, brings new mind into the world and that humanity is infinitely his debtor. The fact that some small countries to-day, such as Sweden, Denmark, Norway, Holland, Belgium, and Switzerland are doing so much more than their proportionate share is due doubtless to the strength of social appreciation in those countries. With greater economic freedom, greater opportunities for education, greater sympathy of man with man, the joy of doing and sharing in ideal activity ought to increase at least tenfold.

Mere brute material competition will then be converted into the infinite and friendly possibilities of ideal rivalry. Genius will then spend its inventiveness in the service of the many instead of in irrational material accumulation and the consequent slavery to the instrument—to that industrial despotism of which he forms a part. Whether master or slave in this despotism, one is tyrannized over by the system. And as Hegel showed long ago, the master is more damned by the relation than the slave, at least in so far as he fails to become conscious of his real human claims through productive social work. It should be clear at any rate that society is not dependent upon a competition for property for its incentive to effort. This is a comparatively low kind of emulation at best. I have often watched a couple of dogs struggling for the possession of a stick. And one can imagine that if there were a dog's philosophy they might reason that life would become horribly inane if there were no sticks to compete for. And perhaps it would for dogs.

Social creativeness takes different forms in different ages in accordance with the ruling passion of the age. Greek creativeness was a birth in beauty. The passion for beauty was a motive for them not only in artistic creativeness, but in their search for truth and in their striving for moral perfection. With the Romans the interest is in social organization—the legal and military unification of the world. With the middle ages religion becomes the domi-

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nant motive; and so we have theological architechtonic and Gothic Cathedrals—philosophy and art being alike handmaids of religion. To-day the dominant motive is social justice, the harmonization of human claims, the liberty of man, woman and child. If he that is instrumental in saving an individual soul shall shine as a star in eternity's firmament, how much more he who is a creative factor in improving a community, a fundamental institution, a nation; who helps to bring about new unities of co-operation, whether local or international; who brings us to see that in spite of all disparities of race and condition "a man's a man for a' that."

I have emphasized so far the personal form of social immortality—the survival of a soul in the unique spiritual mansion which it has built for itself. But there are the more impersonal forms of creativeness, too—the survival in the moral causality of history. And, sometimes, the will may the more completely fulfill its end for the bottle breaking and the ointment pervading the atmosphere of the race. The great souls, the great leaders of men, have often been careless of personal survival. They have written their words in the sand of the fleeting memories of men. They have cast their golden grain in all kinds of soil—hopeful that some might reach a harvest. Thus worked Socrates, Confucius, the Buddha, the Christ. They are greater for their complete abandon to the eternal human cause, for losing themselves. Yet even here we are grateful for a few "words" recorded by their disciples against forgetfulness, for a few personal touches which those that loved them treasured in story. The great movements would seem less effective were their creators mere myths to us. The personal consciousness, however vague, helps to give their influence a focus; and fortunately the artist can here, almost unhampered, give their minds bodies which correspond to their spiritual stature.

But the large mass of human beings, what social consolation is there for them? The many, the forgotten ones, do they still count? They can hope for no personal im-

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mortality except the uncertain one of breed. Yet by losing themselves in the great social mind of which they are part, they can help create the spiritual situations which make generals, artists, scientists, and prophets. It is their combined willing which raises the few. The latter are the index of the spiritual sacrifice and appreciation of the many and would be impossible otherwise. What ages of spiritual creativeness it took to make a Homer. The numerous unknown balladists gave Homer his material, his sense for song. And the appreciative listeners who gathered round the blind minstrel, lived, enjoyed and applauded his song—they counted too; they gave strength, inspiration and vital faith to his soul. Homer's genius (whatever that name may stand for) moulded into unity, not merely the mass of material before him, but what is more, the soul of a people of whose life his song became the chief index and expression. Lincoln's greatness lies in the fact that he is the creative and loyal interpreter in act and speech of the idealism of a great nation that "government of the people, by the people and for the people," not only shall not perish from the earth but be progressively realized through the sacrifices of devoted individuals in war and peace. It is the faith of the loyal, unknown many that buoys up the leader, at the same time that he furnishes them a new consciousness of direction, interprets their deeper will. To live in this larger subconscious social mind, as a genuine, vital, inspiring part of its faith and movement and to be able to say in supreme renunciation, not I but the social mind which liveth in me, this is indeed to save one's soul, to count eternally. And in the infinite ages, God only knows which is the more significant in the developing spiritual community where to live is to lose oneself, to be master is to minister.

If individuals can thus achieve immortality through social creativeness, so can communities and nations. It has been the custom to speak of nations as having a growth and history like individuals—as having a childhood, youth, maturity, and old age. There is, of course, truth in this.

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Nations start from simple origins. In their struggle for survival and in their rivalry with other nations, they become conscious of their life. They develop institutions and traditions to meet their needs; and in so doing they draw upon the accumulated traditions of the race. They thus go through a learning process analogous to that of the individual. They are not, however, dependent upon a single physiological history as individuals are. They have the advantage of a stream of ever renewed biological life. They can live through cycles of rhythms. They become old, it is true—crystallized in traditions and customs; but the inner life may break through afresh, with new youth and creativeness, to live through the process of organization and formalism again, with the advantage all the while of the cumulative tradition of the race. And thus it would seem the spiral of cycles might go on indefinitely.

It is true, as a matter of fact, that nations have had a limited life in the past. This has been due in part to internal, in part to external causes. Wealth, with its consequent idleness, luxury and dissoluteness; class strife and local differences of interest—these and other causes have tended to sap the nation's strength from within, while international wars and degrading international contacts have endangered its existence from without. Perhaps the most potent cause of national degeneracy has been war—civil and external—both from the depleting of the stock of the nation, on the one hand, and from its dissolving influence on morality, on the other. Athens never recovered from the Peloponnesian wars, nor Rome from the civil wars. While, however, nations have thus had a limited biological existence in the past, it does not follow that they have any natural span of life. In the case of the individual organism, science has just begun to investigate the chemical causes of death and to try to discover means for keeping at bay the last enemy. As the causes of national mortality are due to social maladjustments and are fundamentally moral, we may hope that an intenser consciousness of the obligations of man to man, past, present and future,

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reinforced by a more vital religion, may stave off the enemy indefinitely here.

What is more important, however, than the biological and political continuity of a nation is the continuity of its mind—its ideal immortality. And here, as in the individual, the social immortality of the nation, as embodied in its institutions, its literature, its science, its art, is quite independent of its organic continuity. While the independent political existence of the Athenian nation came to an end and its illustrious history as a culture centre also terminated, the reality and potency of the Athenian mind did not cease. Not only did this mind make Rome subject to itself, but in every domain of culture-activity we are still dominated by Greek influence. In like manner we recognize our dependence upon the organizing genius of the Romans. We have incorporated their laws and institutions into our growth. Even more obvious, if not more real, is our indebtedness to the ancient Hebrews. We worship a Hebrew God; we have adopted their prophets as our own; and are held within the sway of their ideals. First hand contact with the civilization of these peoples means a first hand acquaintance with their mind. In the body of literature, art, religion, law, etc., the mind of the nation lives as truly as it ever lived; and when continuity with this mind is established, consequences flow from it as real as though the mind inhabited a biological body. Fresh contact with the Greek mind means a renaissance in science and art; first hand acquaintance with the ancient Hebrew prophets means moral and religious reformation. Pragmatically considered such a mind must be as real as the consequences it produces. As human tissue can now be kept fresh under artificial conditions for an indefinite period after the death of the individual, and can function again as part of a living organism, so the mind of a people embodied in the vehicles of ideal creation is kept alive and ever ready to render fresh service and inspiration. The advantage that meaning has over body is that it can exist in an infinite number of places at the same time, with

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the same reality. Its vehicles can be constantly renewed by the race and thus the life of the meaning kept intact.

Thus the past has its own reality, which we must respect even if we must ever translate its meaning into our own experience to make it significant for us. This social immortality of a people is far more real than its biological or political continuity. While the Greek nation of to-day is justly proud of its temporal continuity with the civilization of Pericles, it had for a long time less share in that civilization than other parts of Europe and can own it in no other way than can the other culture nations. It is possible for a people to lose its political existence and yet to continue its creative individuality, ever enhancing its national immortality and potency. Thus Scotland has continued its national creative tradition unhampered and with unabated glory as part of a larger empire; and Finland, against tremendous odds, has elicited the admiration and sympathy of the world as a creative nation. If a small nation is handicapped in the competition of armaments with the larger nations, it can, as the small nations of western Europe have shown, build an ideal empire and outstrip the large nations in that which really measures the greatness of a people—its contribution to the cumulative civilization of the world.

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THE DIFFICULTIES OF DEMOCRACY.

JOSEPH DANA MILLER.

"Of all forms of government democracy is the most difficult."—Sir Henry Sumner Maine.

"The difficulties of popular government which arise from the modern military spirit and from the modern growth of irreconcilable parties could not perhaps have been determined without actual experience. But there are other difficulties which might have been divined because they proceed from the inherent nature of democracy."—Sir Henry Sumner Maine.

DEMOCRACY contemplates no more than other forms of government—all seek to justify themselves as serving best the happiness of the people. Democracy claims for itself no other *raison d'etre* than a tempered monarchy or an honest despotism. We have learned that it is best that power should proceed from below rather than from above, and that it is not safe to vest large powers in any branch of government or any group of persons. And we trust that the practical application of this theory of government will give us all greater happiness, and that civilization and progress are indissolubly connected with it.

Yet what we have termed the difficulties of democracy remain. We have assumed that what stands in its path are obstacles placed there by its foes, when in fact the chief difficulties are inherent in democracy itself. We have assumed that all that it was necessary to do was to place power in the hands of the people, and liberty would be an accomplished fact. We have assumed that democracy would be attained by smashing institutions that impeded it, and that all the rest was a triumphant march.

But democracy is not so much a system of people's power as *a state of social consciousness.* But even with this all is not attained, since the practical difficulties that remain, defects of knowledge, unconscious bias, failure of governmental machinery, or the natural propensity of men to grasp power and of others to yield power to those

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who authoritatively assert it, are appalling to whoever will think of the possibility of a pure democracy.

It is seldom we reflect how young democracy really is. We look in vain for any satisfactory democratic teachings among the most eminent of the philosophers and thinkers. Democratic tendencies in their writings we may discern readily enough, with suggestions for more liberal laws, but of democracy, as we of to-day understand it as a fundamental concept, hardly a trace. It might be thought that here and there some thinker philosophically detached from his times would have announced the discovery of democratic tenets. But no. Aristotle, who discovered more than one important law of human association, could never get away from the institution of slavery, founding the argument for its necessity upon the deceptive analogy of the subordination of body to soul, of appetite to intellect, of the lower animals to man, and—save the mark!—of females to males. We search the often illuminating but always confused pages of Aristotle's "Politics" for what we of to-day know as democracy. Even Milton's ideal republic was an aristocracy. The real teachers of democracy have only been rescued from obscurity within a time to which the memory of men now living may travel back. Even great democrats like Mazzini have not yet come into their own.

Democracy is thus without a body of doctrine to which it may successfully appeal. Nor has it anything but the most imperfect historic examples at which to point. The democracy of Athens was a rather exclusive government of intellectuals based on slavery; the republican cities of the Adriatic and even the Swiss cantons were administered in accordance with aristocratic principles; even Cromwell's commonwealth was a modified dictatorship. The French Revolution alone at its inception provided the world with an example of democracy, but it was more an aspiration than an experience.

It has been said that "the remedy for the ills of democracy is more democracy." There is truth in this, but not

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the whole truth. Those who are perplexed or disappointed at the results of democracy should realize that the course of development through which civilizations and peoples must pass is analogous to that which confronts the infant learning to walk. Democracy will stumble and lean upon rotten pillars long before it learns to walk alone. Like the Israelites it will return every now and then to its idols, and set up brazen images of demagogues before which it will prostrate itself, so that the very friends of democracy will despair of its future.

The ills of democracy, then, are not all to be remedied by more democracy. For they are inherent in democracy. The methods by which it seeks to express itself will be found to be halting, inarticulate, stammering. Universal suffrage will not of itself bring democracy any nearer, nor will the Initiative, Referendum and Recall. For these offer no guaranty that the rights of minorities will be any safer. Indeed there seems to be some reason for believing that the rights of minorities have been established and secured in fundamental law, by constitutional and court decisions in the making of which majorities have had little or nothing to do.

Until democracy shall agree as to what democracy is we shall not move any nearer to its attainment. We have certain democratic shibboleths such as "All men are born equal," "Governments derive their just powers from the consent of the governed," and "No taxation without representation." We have of course never lived up to any of them. We denied the first by the institution of slavery, the second by our policy in the Philippines, the third by the denial to women of the suffrage. Democracy is like religion; men seldom live up to its professions.

If we have learned to believe whole-heartedly in democracy, wherefore our distrust of her? Is it that our doubts speak more strongly than our faith? We hear that China has become a republic, or that the Persians have established a parliamentary form of government. We sympathize, but we do so with caution. We say: It may be

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well to wait. Maybe they are not yet ready for democracy. "Not ready for democracy?" says someone, indignantly; "are not the ills of democracy to be cured by more democracy?" Maybe; but then again it may be best to wait. There was Mexico with her Madero—the history is too recent to need more than just its mention. Perhaps democracy is a lesson to be learned—learned through suffering and travail—reached through long and tortuous journeying.[1] Maybe it is not something that springs full-armed and perfected like Minerva from the head of Jupiter. Maybe the cure for the ills of democracy is not only more democracy, but more knowledge and more love.

Why not recognize that democracy grows only as public opinion grows in intelligence and toleration? Public opinion as a governing force was born hardly more than a hundred years ago. Its advent was heralded in France by the ferment of revolution, in America by the Declaration of Independence, in England by the Reform Bills. But none, even among the more intelligent and well-meaning statesmen of the time anterior to this, reckoned with public opinion as a governing force. For there was no such thing. Government to the masses of men merely personified itself in the ruling power, and all but the very few were gathered under the personal standards now of one leader, and now of another.

Perhaps conservatives and democrats do not differ so much as to the right of public opinion to govern in the modern constitutional state. Where they differ is rather on the question of the distribution of power, one side holding that the interests of the state are best conserved by powers lodged with the possessors of a moderate amount of property. The argument is that the stability of the state is thus more fully assured. It must not be forgotten that even the ideals of an aristocracy really contemplate the

[1] "There is nothing more arduous than the apprenticeship of liberty," says DeToqueville, in one of those sentences with which his great work, despite its minor deficiencies, is replete.

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public welfare, however inimical to such ideals may be the practical administration of the aristocratic state.

Let it be remembered that no *a priori* justification of democracy can be entertained. Let us dismiss from our minds all such predilection founded upon early education, frothy sentiment, or the rhodomontade of the mere demagogue. Aristocracy and democracy seeking the same goal urge different paths to its attainment. Let us test each working method by its results. We shall find that aristocracy has failed to justify itself. But we shall not therefore conclude that democracy is not without its grave difficulties. We shall find that these are many, that it has not fulfilled its promises, and that of all governments it is the one most prone to respond to the weaknesses of humanity and to fall below the highest tests of intellectual worth.

The friends of democracy have failed in not always clearly formulating the relations of democracy to the individual. So they have been compelled to face the sneers of their opponents at "the sacred fifty-one per cent," and the more serious arguments cited from the known tyrannies of majorities. There have been real friends of liberty who have distrusted democracy because they have contemplated it from only one side, having favorable eyes only for those forms of liberty that have been imposed upon the masses by the gifted individuals of the race. They have not duly considered those forms of liberty which have developed from below—the most lasting ones indeed—rising from the barely articulate aspirations of the masses and resistlessly impelling the living currents of our progress. From this partial view of the advance of the race has arisen the age-long controversy between the friends of democracy and those of its opponents who have loved liberty quite as sincerely.

Even majority rule itself is not a principle; it is a working method only. It is better that the majority should rule even when wrong. For the minority, "the saving remnant," may not hope to control a corrupt or ignorant majority any more than that same majority may hope to

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rise at once out of its ignorance and corruption. But it will rise out of it in time. Time is the important element. As Matthew Arnold has said in that wonderful essay entitled "Numbers": "Immanuel and His reign, for the eighth century before Christ, were fantastic. Immanuel and the remnant could not come to reign under the conditions there and then offered them; the thing was impossible."

For, of course, though we accept majority rule as a working method, it is no more true than it ever was that the majority really govern. For "the saving remnant," the active, enlightened, progressive spirits of a community, are under majority rule its real governors if they are numerically powerful enough. Society presents itself somewhat in this light as regards its governing elements. Two dominant forces confront each other, one with the lust of self-aggrandizement fortified by shrewd intellectual purpose and the possession of special privilege, the other armed chiefly with moral power seeking a better state. Between these two battling elements, which are the real forces of social government, are the majority under universal suffrage, sitting as arbiters or jury, animated by passions and impulses noble or the reverse and swayed now by one side and now by the other.

Consider the course of elections. We imagine the issues are fairly and clearly drawn. These may be the tariff, anti-imperialism, the currency—what you will. The campaign draws to a close; we are on the very eve of the day when these questions are to be decided by vote. What can be clearer than that they are to be determined in accordance with democratic methods and procedure—by the vote of all the people? The final decision may not be a wise one, but we are at least to have an authoritative vote on great questions of party policy which the people have gravely weighed and considered.

But to what degree are these questions so decided? We have all heard of "the psychology of the crowd." Some "Burchardism" or Morey Letter Forgery, some

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belated or scandalous rumor affecting the private life of the candidate sprung at the last moment in the campaign, too late to be successfully refuted, decides the issue, and a great party is swept from power and great and momentous policies deferred. These frequently, and not the issues, are the explanation of the recurring swing of the political pendulum.

It is impossible even to indicate the infinite number of considerations consisting of prejudices, friendships, traditions, sudden apprehensions, et al, that determine elections. We think the issues determine them. But to the extent to which these considerations tend to obscure the "issues" are we face to face with what I have called "the difficulties of democracy."

What are the motives which chiefly animate the voters at election time? Men do not vote because of questions of small gains for themselves. This is why the democratic party appeal for the remission of tariff taxes was so long unavailing. Voters even when they had lost faith in protection, were not greatly concerned if sugar cost a penny more per pound, or cloth a few cents more per yard. Nor had they the patience to follow the argument for increased production and commerce through the remission of these taxes. But what seems a hopeless view of the possibilities of democracy in considering the apathy of the citizens in the mass on questions such as these is in reality its chief hope. For men in the mass are mainly influenced by their considerations of right and wrong. Only in this way can they be strongly moved; and it is this ground that is the practical justification of a working democracy.

The friends of the Initiative and Referendum think to solve these difficulties by a system of direct voting upon measures. But they have borrowed new difficulties for those discarded. For as Austin has pointed out in his "Jurisprudence," while the people are good judges of the moral principles involved in legislation they are poor judges of the practical results of law-making.

That the trend of the age is toward democracy seems too

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obvious to be denied. And democracy is interpreted as government by the will of the majority. The expression of that will is the law as enacted by the representatives of the people. It is found in practice that representatives, often through ignorance, corruption, or misinterpretation of the meaning of the mandate of the people, retard the doing of the popular will instead of expressing it. Hence the general movement toward direct legislation. Here again a serious difficulty presents itself. Laws can only be enacted through language, and language often as poorly represents the thought it is employed to express as do representatives the will of their constituents.

The proceedings of a legislature involve the consideration of thousands of bills, on only a small percentage of which can representatives be said to have expressed an opinion. Not infrequently it happens that legislatures are called upon to pass upon questions which were not at all questions in preceding elections. In such cases legislators must pass upon matters in relation to which they have received no instructions.

But the difficulty does not end here. Social relations have become so complex that highly technical statutes have to be framed to regulate them, and the ordinary legislature in the nature of things is made up of men who are only partially educated in the meaning of legal phraseology. They are therefore compelled to accept the interpretations furnished by people who are not disinterested. This state of affairs gives the "lobby" its power. Sometimes the "lobby" is made up of agents of special interests and sometimes of men employed by more or less public spirited bodies seeking their ends for what they believe to be the public welfare. These are the men who try to have legislators accept their interpretation of the laws they are called upon to enact. And it is upon such representation that laws are passed, for it may well be doubted whether any laws are fully understood by even a small minority of the men who enact them.

The difficulty is not diminished but rather increased by

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referring such matters to referendum. For there will be lobbyists for the people as well as for the legislators. The great mass of the people can no more comprehend the language of proposed laws than can their representatives. They must take the explanation of those who set themselves up as guides of public opinion. And very often such men are as untrustworthy as any other.

Theoretically we conceive of democracy as a system in which all men shall have a voice in determining the character of the laws under which we live. But how shall we exercise this power—directly or indirectly? If indirectly there is danger that the reins of government will slip into the hands of privilege, and the laws become in reality government by the few. Perceiving this the friends of the Initiative and Referendum would resort to direct legislation. But the difficulty of obtaining an expression of their will from democracies composed of widely differing social elements must be recognized. The numbers to be reckoned with are one difficulty; local interests are another; unreasoning party traditions another; the failure of all but a few minds to grasp the essentials of legislative proposals is another. These difficulties are increased rather than diminished by the method of submitting such measures to popular vote.

One of the gravest objections to the continuous direct appeal to the people on legislative matters, in addition to the unnecessary strain it puts upon democracy, is the fact that men in the mass are not influenced by reason, but by emotion and sentiment. This is not a fact upon which we need to commiserate humanity, but one indeed over which to exult, since it enables mankind more clearly to apprehend the abstract principles of Justice, Freedom and Right, before which the unaided reason is apt to falter. But the concrete matters of legislation that need for their proper consideration the colder calculations of precedent and incidence, are not so easily resolvable by men acting through the ballot. Deliberate analysis is not possible to the many acting in this way. Plebiscites will be much

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nearer to the moral truth of a great principle than to its concrete application.[1]

Another of the difficulties of democracy is the selection of the right men to direct affairs. The honesty and efficiency of official functionaries are as important as the laws. Even good laws may be administered by incapable officials in a way to nullify them, and if laws are bad it is really better that we have honest men to enforce them, since the baneful effects of such laws will then be more clearly shown. This is a phase of democracy which our too enthusiastic friends of the Initiative and Referendum too often ignore. As important as our legislation therefore is the character of our nominating system.

Largely because of prevailing nominating systems political power tends to gravitate into the hands of groups of men at the head of which we find the "boss," that phenomenon of democracy who is yet its antithesis. It is the few—the more gifted—who must lead in science and literature. Correspondingly, a few must lead in the politics of a democracy, but owing to the immaturity of political thought, these are not the highly gifted nor even the highly moral.

Another danger is the tendency of large industrial, especially of semi-public, corporations, to assert a power independent of the state. This is peculiarly the case with those corporations which possess powers to exclude competition, either by the nature of the functions they perform, or by the direct conferring upon them of such powers by the state. Democracies are less vigilant in detecting such forms of infringement which stronger governments, being jealous of their prerogatives, are quick to suppress. Until democracy shall perceive the nature and use of public functions, and the degree of ownership or control it may safely and legitimately exercise over them, they must

[1] Disraeli was right when he said: "We are not indebted to the reason of man for any of the great achievements which are the landmarks of human action and human progress. Man is only truly great when he acts from the passions; never irresistible but when he appeals to the imagination."—Conningsby.

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remain a constant menace to the stability and continuance of democracy.

It is useless to deny, too, that the checks and balances which from the very beginnings of government have been urged as essential, were not intended to guard democracies from a danger that is very real—*the power that tends to further increase of power*—and because of this that one branch of government tends constantly to usurp functions which belong to other branches.

If it be the tendency of power to aggrandize power, then it must be no less true of majorities than minorities. Democracies with universal suffrage, unenlightened by the severest knowledge, are likely to encroach upon the liberties of minorities. Indeed this is one of the chief difficulties to be guarded against. Though liberty is always to be preferred, liberty without knowledge must degenerate into license, and hence the inevitable reactions and loss of liberty. The remedy is not in those self-imposed restraints upon democracy, but in the enlightenment without which democracy is no more to be preferred than any other form of government.

Party spirit is another of the difficulties of democracy. It is a melancholy history, that of the United States in the more than fifty years of domination by the superstition of party loyalty. It is no exaggeration to say that the long life of both the Federals and Whigs, as well as that of the Republican and Democratic parties in later years, was due neither to the merits of the arguments advanced, nor to any far-seeing leadership of party statesmen.

It is well that we learn in the consideration of this subject that forms of government have not the importance they seem to have. Democratic forms do not of themselves insure democracy. That is, unconsciously, the very grounds of the objection on which the opponents of universal suffrage rest their case, and the friends of universal suffrage, in combating the arguments of their opponents, miss the point in the same way. For universal

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suffrage is not democracy, but only one of the modes to its attainment.

And now we come to the most serious of all the difficulties that democracy must face. Given an electorate with a large proportion of its members steeped in poverty, and thus open to the temptation of bribery, neither universal suffrage, direct legislation, nor any perfection of purely political forms in the direction of democracy, will avail. Where opportunities for employment are a boon for which men must struggle and sue, and are thus the easy prey of vote-buyers on election day, or demagogues with their insidious appeal at all times, the forms of democracy may indeed exist, but the spirit has long since fled.

Despite some appearances to the contrary we have not yet passed this danger. Our friends of the Direct Legislation movement tell us that "You can buy the legislature, but you cannot buy the people." But unfortunately we have more than one example of purchasable electorates—notably in the somewhat recent happenings in Adams County, Ohio. Then, too, electorates are open to certain insidious forms of appeal even when not directly purchasable, to which legislatures are immune. This is obviously true when the balance of power is in the hands of those whose bitter necessities make a few dollars on election day, or some little job with the city government a great temptation. It is not necessary that the entire community should be corrupt; a small number may often be sufficient to decide the issue between democracy on the one hand, and demagoguery or plutocracy on the other. These elements in a democracy constitute its constant menace.

Until society is composed of men and women who have sufficient leisure to study and digest public questions the will of the majority can be little more than the cry of the demagogue. Most people, as society is now constituted, cannot pass intelligently upon general legislative questions. Nor can these questions be safely left to any class in the community, as history abundantly testifies. Power so

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lodged has always been used for the selfish interest of the ruling class.

Hence the hope of a true democracy must consist in struggling toward a society in which the masses of men will have such living conditions as will permit them to devote much of the energy now directed to making a livelihood to the determination of public questions.

It may be objected that men who have abundant leisure do not now so occupy their minds. But this objection holds good only as leisure is a limited and not a general possession. Poverty and wealth are alike temptations to dissipation, in one case to woo forgetfulness, in the other to occupy idleness.

It may be safely affirmed that democracy is only possible under conditions where inequalities of fortune are not greater than inequality of human intelligence and character. A system which tends to accentuate human inequality by giving to him that hath while robbing him who is poorly endowed makes democratic government impossible or impotent to work out its true destiny.

In conclusion, reasoners for or against democracy know nothing of its true genesis, its actual life, or its real significance who know not the Economic Man. Political democracy is conditioned upon economic independence, is influenced by the flux of social forces more than by governmental forms. A portion of the people deprived of the opportunity of making a livelihood—the unemployed—have more power to determine whether democracies shall live or die than the most perfectly framed hypothesis of your political reformer. For not on forms does democracy so much depend as on the relation of Man to his Job. Those who would establish democracy must found it on the equality of economic opportunity.

JOSEPH DANA MILLER.

NEW YORK.

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NIETZSCHE'S MORAL AIM.

WILLIAM MACKINTIRE SALTER.

NIETZSCHE passed morality through a process of criticism (critical analysis) such as perhaps it had never undergone before. To attempt to give an idea of it and its results would require an article by itself—perhaps several. I wish now rather to indicate the main outline of his construction in this realm. For however negative his attitude may seem to be—and sometimes his language would almost suggest that he thought himself out of the pale of morality—he does propose a constructive moral principle, and it is likely that this will be counted his chief significance in the future.

I.

I may say by way of anticipation that it is a mistake to suppose that Nietzsche was by temperament and instinct a radical—traces of a certain natural conservatism are plainly visible in his writings. He mentions with pride that he came of a line of Protestant pastors,[1] and it is evident that it was intellectual necessity more than anything else that led to his departure from the ancient ways, and that even in his mental revolutions he kept something of the old spirit. He once speaks of conscientiousness in small things, the self-control of the religious man, as a preparatory school for the scientific character.[2] He says in so many words, "we will be *heirs* of all the morality that has gone before and not start *de novo*. Our whole procedure is only morality turning against its previous form."[3] If he speaks of an overcoming of morality, it is a self-overcoming,[4] *i. e.*, not by a foreign and hostile party. "Why do I love free thinking? As the last consequence of previous morality"—and he goes on to indicate how it comes from

The footnotes to this article will be found at the end.

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justice, courage, honesty, loving disposition to all.[5] The demand for a wherefore, a critique of morality, is a form of morality, the most sublimated kind of it.[6] In reflecting over the struggles and changes he had gone through, he says, "at last I discovered in the whole process living morality, driving force—I had only imagined that I was beyond good and evil" [7] (here using the phrase, "beyond good and evil," not in the technical sense which he gives it in the book with that title, but in a broad general way), or, as he puts it in paradoxical form, "I had to dissolve (aufheben) morality, in order to put my moral will through." [8]

Moreover, criticism had revealed to him that there have been varying types of morality, and hence the question naturally arose, may there not be still other and perhaps higher types? [9] Of course, this presupposes a generic idea of morality, more or less separable from special instances. Nietzsche does not formally define it, but we gather from a variety of direct or incidental references what he thought was involved. In the generic sense, a morality is a set of valuations resting on (supposed) conditions of existence of some kind.[10] Further, it is something regulating, commanding, so that it introduces order into life: some things may be done, others may not be done—discipline, strictness hence arising.[11] On the subjective side, its root is reverence, the only properly moral motive.[12] As action, it is free (not in the indeterminist sense, but in the sense of voluntary, not forced).[13] Nietzsche sometimes criticizes ideals, but when he does so, he has in mind mere abstract desirabilities, fancy pictures unrelated to reality.[14] A morality, as he understands the term, must be a really possible ideal of real beings—something then related to the earth and actual men.[15] Further, he objects to praising and blaming with their ordinary implications of responsibility and free-will; all the same, he recognizes things to honor and things to despise,[16] things to further and things to oppose,[17]—so that a basis for moral distinctions still

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remains to him. All this in general. And now as to the special type of morality which he proposes.

II.

It is conceivable, he says, that the existence of man should be so precarious on the earth, that any rules and any illusions would be justified by which he is kept alive —the strictest discipline might be necessary. In this way primitive types of morality were justified by him, even if they covered much that seems to us superfluous or absurd—man could live only in and by society, and the social straight-jacket was imperative. Now, however, human existence has become relatively secure. Man abounds, perhaps superabounds. While under the early situation morality was not a matter of choice, now a certain freedom arises: we can more or less choose our ends, aiming in this or that direction as our imagination or taste or reason dictates.[18]

It is under such a presupposition that Nietzsche proposes his moral aim. The problem appears to him in its most general form like this: Here within what we call humanity is an immense mass of force, accumulated and kept from wasting and self-destruction in no small measure by the influence of past morality—what shall be done with it, what impress shall be put upon it, what direction shall it take? Shall we let it drift? Shall our policy in relation to it be *laisser aller, laisser passer*—trusting to Providence or to destiny? Nietzsche thinks that confidences like these have an uncertain foundation and that humanity has already drifted too long. We should rather, he urges, seek to put an end to the horrible rule of folly and chance, hitherto called "history," for things do go to a fearful extent by accident in this world, and the call for foresight, for reason, is great.[19] "The immense amount of accident, contradiction, disharmony, stupidity, in the present human world points to the future"; this is its "field of labor, where it can create, organize and harmonize."[20] A goal does not exist now, the ideals of men contradict one another; they

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arose in far narrower relations and were born of numberless errors.[21] Moreover, it is an aim for the totality of humanity that is wanted; it is humanity as a whole that needs to be organized. What is the ideal that may make an aim, a goal, and a principle of organization?[22]

Before giving Nietzsche's actual answer to this question, a word may perhaps properly be said as to the general logic of his procedure. In the first place, he remembers that it is an interregnum in which we live—hence we cannot be dogmatic, can only propose: "we are experiments, we wish to be."[23] He is simply convinced in general that the future (future possibilities) must regulate our valuations—that we cannot seek the laws of our actions *behind us*.[24] Secondly, the end or goal is not *given* to us. There is no absolute command, saying "so and so thou must choose," there is none from metaphysics and there is none from science: science indicates the flow of things, but not the goal.[25]

Once with an ideal, science may tell us how to reach it; science also gives us presuppositions (the general nature of existence) with which an ideal must correspond—but it does not fix the ideal itself.[26] Herbert Spencer's picture of the future, for instance, is not a scientific necessity, it only indicates a wish born of present ideals.[27] Indeed, thirdly, this realm of ends is a field where the ordinary categories of true and false do not apply. In the final analysis, an end or goal or ideal is not a reality, an object to which thought must conform, but a something projected by the mind and set (made objective) by the will. We *make* ends, goals, ideals, they are a proof of our creative power. When we have set them, there are real conditions of attaining them, and these we do not make; we have to discover them, here we are bound, and science is supreme. But the ends do not exist save as we posit them: they are beyond questions of true and false.[28] Here an extraordinary assassin motto that Nietzsche hit upon holds literally: "Nothing is true, everything is permitted."[29] But, fourthly, we do not *need* to have an end given us (by God or nature); we have creative power and can make one our-

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selves. I say "can," for it is at last a question of strength; perhaps some cannot. Zarathustra draws a picture of the history of man's mind; there are three stages—it is in turn a camel, a lion, and a child. The camel carries, bears what is heavy, dutifully submits, originates nothing, endures all things. The lion wants freedom, gets it, does away with all masters, still is not able to create. The child, however, can; it arises in innocence and oblivion of the past, is a new beginning, a first motion, a wheel turning of its own energy; the child plays, and is equal to the play of creation. The camel represents the old morality, useful, but limited in power; the lion the critical, destructive spirit, also useful but limited in strength; the child positive creation. Man's mind in its historic course passes through these stages; and now it is the age of the child.[30] Fifthly, as to how the mind shall create, *what* it shall produce, there is in the nature of the case no outside law. It is a matter of choice, of will absolutely, not of will as opposed to reason, for reason makes no deliverances on a supreme question like this [reason is the faculty of reasoning, and proceeds from a starting point which it presupposes, *i. e.*, finds, but does not create]. In a moral aim, one puts forth his supreme choice—there is no other basis than this voluntaristic and æsthetic one. Nietzsche sometimes uses this word, "æsthetic" so often repugnant to moral thinkers.[31] His meaning becomes clear in illustrations he uses. For example, we commonly take for granted that we should do this and that, since otherwise our life would be in danger. But suppose a man is ready, for the sake of honor or knowledge or some supreme passion to risk his life or to throw it away, how shall we argue with him, what common premise have we to start from, since we take life as supreme and he something else? Or, again, we often say that this or that is good, because posterity and the preservation of the race depend on it. But this presupposes that we *will* posterity and the preservation of the race. Suppose that someone does not, the instinct and demand that is so strong in most of us being weak or lacking (Nietzsche thinks that it is not

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necessary)—what then? What will reasoning help in such circumstances? Or, supposing that we are all agreed that existence is desirable, what kind of existence shall it be? Some may prefer the greatest possible amount of existence, at least of comfortable, happy existence. Others may prefer the highest type of existence, even if small in amount, or if the comfort and happiness of the mass would have to be sacrificed somewhat to attain it. How is a decision to be reached? There would appear to be a difference of ultimate ideals, last choices. That the welfare of the mass is *in itself* the more valuable end is a naïveté which Nietzsche leaves to the English biologists. In truth, there is no value in itself, all values are posited, set, and relative to those who posit them. Instead of a rationale (*i. e.*, rational deduction) of supreme ideals, it is possible then only to give a psychology of them—that is, to indicate how as matter of fact they arise: and this is the sixth point. Ideals, says Nietzsche, [though he is speaking here of his own personal ideals, I think he would say that the truth is general] are the anticipatory hopes, *i. e.*, hoped for satisfactions of our impulses; as surely as we have impulses, so inevitably do they work on our fancy to produce a scheme of what we [or things] should be, to satisfy them—this is what idealizing means. Even the rascal has his ideal, though it may not be edifying to us.[34] Nietzsche does not blink the fact that ideals, and ideals of honest people, may vary, that there is no one of which we can say with logical honesty (men being as they are to-day) that it is *the* ideal. Especially at the present are differences rife.[35] Even when men agree in calling certain things good, they differ as to which are better and the best—that is, the rank (Rangordnung) is different.[36] The very concepts of things (of health, for instance) differ. To a Schopenhauerian or Buddhist, a strong lusty man, eager for life and power is not in a state of health at all; while from another point of view, it is the Schopenhauerian or Buddhist, craving for the extinguishment of his individuality, who is sick.[37] It is the final ruling impulse in every case that fixes the ideal,

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and even gives names to things corresponding to its valuations.

The practical conclusion of all this is that in his own case Nietzsche, who most surely has an ideal, does not make any pretensions of absolute rationality about it and does not propose to force it upon any one else, whether by arms or by logic. He simply says to us, "This is my way; what is yours? *The* way there is not." In other language, "I am a law only for my own kind, I am no law for all." [38] Indeed, having in mind the native differences and inequalities of men, he thinks it no special distinction to have an ideal that everybody shares with us. An ideal is something in which one bodies forth his very will and personality; how can he expect that all others will have just the same, unless he is like all the rest and has no distinctive being of his own? [39] As we shall see, particular ideals Nietzsche expects will vary more or less among different classes. The ideal that mankind may have in common can only be very general and one that for many will seem perhaps far away.

All the same ideals may be *recommended*, and the possibly universal ones to all. *While* mankind has no generally recognized goal at present, and to go ahead and lay down moral rules as if it had, is unreason and trickery, recommending a goal is different, for if it pleased mankind, mankind could adopt it and give itself a corresponding moral law of its own pleasure.[40] And despite all Nietzsche's concern for freedom, he is eager to recommend his own ideal, eager and, one might almost say, imperious. The higher meaning of the world's spiritual endeavor, the supreme significance of the striving of the highest minds is, he thinks, to find the thought that will stand over mankind as its star.[41] He enters the lists—here is the practical meaning of *his* will to power.

Yet, though Nietzsche recognizes this voluntaristic or æsthetic basis of the moral aim he proposes, we must not be led to think that there is any lack of stringency, whether logical or practical, in the aim when it is once accepted. All morality, Nietzsche's included, involves law and sub-

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ordination. We choose the ideal, not the means by which to attain it—these are fixed by the general nature of things. The taste that is voluntary is only the supreme taste, not the lesser ones. If we want a strong physical organism, what we like or dislike at the moment, whether as to exercise or to diet, may count for little—so and so we have got to live.[42] It is the same with any great social ideal: if we will the end, we must will the means, whether they strike the fancy and please us or not. Even a musical melody, remarks Nietzsche, "has laws of logic which our anarchists would cry down as slavery."[43] Professor Riehl cites in this connection Goethe's word about "exact fancy," the fancy of the classic artist, of classic art; he says that moral judgments even taken as æsthetic, remain absolute demands, whose object is formed by generally valid ideas of value.[44] Nietzsche thinks a connection of morals with art in general no reproach, I may say in passing. It is true that art has as a rule looked backward, glorifying the past; but in its essential nature it is simply an ideal-building force, a making visible of our innermost hopes and wishes.[45] From this point of view, morality is a species of art. But it is a very particular species, since while it starts with a picture, it proceeds to create in flesh and blood, the philosopher-artist taking the lead, the rest of us being fashioned or fashioning ourselves according to the requirements of the ideal projected. Life comes thus to be very strictly under law, and obedience a part of the nature of most of us. "To the good soldier 'Thou shalt' sounds pleasanter than 'I will.'"[46] And for the men of the future whom he anticipates, there will be something a hundredfold more important than how they or others feel at the moment, namely an aim for the sake of which they will suffer everything, run every risk, and sacrifice all (themselves and others)—the great passion.[47]

III.

And now what is the final aim which Nietzsche proposes? It is no other than life, and particularly the highest ranges

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of life. Man is higher than the animal, and there may be something higher than man, *i. e.*, than man as we ordinarily know him. The instinct for something perfect, or as perfect as the conditions of existence will allow, is, I take it, the bottom instinct, the ruling impulse in Nietzsche. Essentially he was a religious man. Perhaps in the last resort we should not call him a moralist in the ordinary restricted sense of that term. As I read him, deep instincts of reverence preponderate in him, instincts that have their ordinary food and sustenance in the thought of God. But as his scientific conscience forbade him that belief, the instincts were driven to seek other satisfaction and found it measurably in the thought of the possibilites of mankind. Very far, indeed, was he, from a Comtean worship of humanity; the mass of men excited little reverence, rather pity or disdain, at best, moderate respect for the moderate work they do. But now and then there emerge from the ordinary run of our species extraordinary individuals, and the thought of them, the possibilities they suggested, set his mind on fire. If there be no God, he, as it were, said to himself, may there not still be something beyond man? From our human stock, may not something transcendent arise? In this light I am led to interpret a strange remark to the effect that his tendency as a whole was not to morality, and that from an essentially extra-moral way of looking at things he was led to the consideration of morality—from a distance.[48] The distance or elevation on which he stood was that of the essentially religious point of view. For from this standpoint something great belongs to the fabric of things, something awe-inspiring, something unreckonable, something sovereign and clean above us, and the world and life become inevitably flattened when the thought is lost.[49] It was Nietzsche's experience, and is the secret of the undertone of melancholy and pessimism that we feel in him. One who knew him intimately (at least for a time) thinks that his history turned on this loss of faith, on "emotion over the death of God," and that the possibility of finding a substitute for

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the lost God became an animating thought with him.[50] Later, when a readjustment had taken place, Nietzsche uses [makes Zarathustra use] this significant language: "Once, when men looked on the far-stretching sea, they said God; but I teach you to say, Superman." [51] That is, the conceptions are in a way correlative. The future lords of the earth will "replace God," begetting in those whom they rule a "deep, unconditional confidence." [52] The moral aim of Nietzsche starts with a transcendent conception like this. The task of the race is to create these lords or Gods—if you cannot create a God, Zarathustra says, stop talking of one.[53] That is, the morality of Nietzsche is a semi-religious morality. To this extent, he belongs in a different category from Utilitarians and others, who, taking men as they are, simply think of a way in which they may get along pleasantly and profitably together.[54] He rather belongs to the company of those, or of One who said, "be ye perfect," and set up as the standard the infinite perfection of God.[55] "Let the future and the furthest be the motive of thy to-day." "Do I counsel you to love your neighbor, the one nearest you? I counsel you rather to flee the nearest and love the furthest human being." [56] In such sayings the spirit of the man and the final principle of his morality come to light. Man [as he exists] is something to be surpassed:[57] that is his starting point. It is not a proposition that can be proven, nothing that can be deduced, nothing that can be scientifically established; naïvetés of that sort he leaves to others: it is simply his choice, the outcome of his ruling impulse, which is to see the great, the transcendent in the world, so far as the conditions of existence allow.[58] If we do not make such a preliminary choice with him, his practical prescriptions will be of little interest to us.

In a sense, the aim might be called cosmical, *i. e.*, the world is apparently thought of as pressing to a higher realization of its potencies through us in this way. Nietzsche says, "We are buds on *one* tree—what do we know of

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what can come out of us in the interests of the tree! . . . No. Beyond 'me' and 'thee'! To feel cosmically!" [59]

I have said that the instinct for something perfect was the ruling impulse in Nietzsche—how real it was comes out in a variety of minor indirect ways. Zarathustra gives comfort to his guest-disciples in the thought of the little good perfect things already in the world—put them around you, he says,—their golden ripeness heals the heart; the perfect teaches hope.[60] Nietzsche knows the charm of the imperfect, but this to him is in its suggestions, [61] he has none of that fond sentimental way of lingering over imperfect things which George Eliot sometimes shows.[62] Oddly as it may sound in these days, he pronounces the love of man "for God's sake" the most superior and elevated sentiment which mankind has hitherto reached, a love of man, without this thought of something beyond that hallows it, being a more or less stupid and brutish thing.[63] "To man my will clings, with chains I bind myself fast to man, because so I am pulled up to the superman: for thither moves my other will." [64] "Grant me from time to time a glimpse of something complete, finished, happy, mighty, triumphant, in which there is still something of fear, a glimpse of a man who justifies mankind, a complementary and redeeming instance, for whose sake we can hold fast our *faith* in man!" [65] For man as he is, is not a happy throw of Nature's dice; there is something fundamentally wrong (verfehltes) with him; connecting with the old religious language, Nietzsche says that in place of the sinfulness we must substitute the general illconstitutedness (Missrathensein) of man.[66] He is tentative material merely; the failures preponderate; it is broken fragments, ruins (ein Trümmerfeld) that we have about us.[67] Hence suffering is Nietzsche's main feeling in view of what he sees.[68] We thirst, he says, for great and deep souls, and discover at best a social animal.[69] Only a living habitual sense of perfect things could beget a dissatisfaction like this.

The aim which Nietzsche proposes he thinks is different

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from that of previous moralities. The various moral judgments of the past have been in the interest of "peoples," "races," etc., not of the species man and its utmost development, and indeed of peoples who wished to assert themselves against other peoples, classes who wished to mark themselves off from other classes. Morality has been an instrument for the preservation of a group (of some kind), not for the development of the race.[70] This was the net outcome of his critical study, morality always appearing as the law of a group and for the group's interest. Even in Christian morality he finds no exception, since he sees in it an assertion of the interest of the mass as against the class that had ordinarily been above them, the kingdom of heaven being only an order, in which the mass-morality (Heerdenmoral) rules absolutely, leaving no room for moral conceptions of another order, and no place for another than social type of man. But for the mass to aim at their own good and make their valuations supreme, is not necessarily to raise the type of man; nay, just to the extent this morality dominates and excludes all others, it tends to fix the human type as it now exists and prevent the rise of anything different and higher. Here is the secret of the antagonism, violent at times, which Nietzsche manifests to Christian morality. By its very attractiveness and sweetness, by the very validity it has within a limited area (for he never questions the *place* of mutual love and help), it seduces us to give it an absolute authority and takes us away from the thought of those higher possibilities of mankind that alone, to his mind, make life greatly worth while. The carrying life to new and [practically] superhuman heights, not security, happiness and comfort for the mass, is Nietzsche's ideal.

IV.

The aim is vague and yet already with it Nietzsche has a principle for judging things. With an ultimate value, he estimates other things accordingly. If the highest reach of life is the measure of things, then good comes to be what

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tends that way, and bad what tends in an opposite direction. There are lines of procedure now, possible actions, feelings, thoughts, institutions, laws that harmonize with movement toward the desired goal—they are then to be furthered; other courses are to be opposed. Nietzsche calls it a naturalistic view; by this he means that there are no "oughts" or "ought nots" transcending life, but that life itself is the ultimate standard, and that "ought" and "ought not" are fixed by the demands of life,[71] in the last resort, the demands of the highest life. He also has in mind the fact that we are bodies, a certain type of physiological organization, something far more and deeper than our momentary thoughts and feelings, or, for that matter, the whole reign of our *conscious* life,[72] and that it is this perduring substratum, the same whether we are awake or asleep, the same more or less in father and son, this actual line of physiological descent, out of which the higher men of the future are to spring—in other words, that we carry in our loins now the superman, that he is no angel from other spheres or bodiless phantasm like the Greek gods.[73] This is the meaning of Nietzsche's valuation of the earth, of which we hear so much in *Zarathustra*. Stay true to the earth he exclaims, and lead the virtue that has flown away from the earth back to it, back to body and life.[74] The deserting life and wallowing in the thought of some other sort of existence is the supreme disloyalty.[75] To spin the threads of our human life so that they ever become stronger —that is the task.[76] Let us now see how the supreme valuation brings still other detailed valuations in its wake.

First, we have a standard for measuring truth and goodness. These are valuable so far as they serve life, but they are not supreme over life. If there are truths that are unfavorable to life (and we have no guarantee that there may not be such and rather reason to think that there are some—unfavorable at least to the life of most), there is no absolute duty to know them. Some forms of goodness —for instance, the mass ideals of goodness taken absolutely —may work contrary to the highest forms of life, may lame

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and weaken the aims of great desires[77]—they are not binding upon all. The hostile destructive spirit (the Böse), not love and pity only, has work to do in the world.

Second, we are able to judge the popular ethical notion that the aim of morality is the general welfare, or, as it is sometimes put, the preservation and furthering of the interests of mankind. Preserving, says Nietzsche, but in what, along what line? Furthering, but toward what? Is it the longest possible duration of mankind that is in mind or its greatest possible deanimalization?—for these things may contradict one another. To Nietzsche, I need not say, a line of ascending life is better, even though it comes to an end, than life continuing on the same level, even though it be indefinitely prolonged.[78] "General welfare" is equally ambiguous, or, if it means that the welfare of the mass of mankind is the goal to be aimed at as opposed to the evolution of higher types which may have to be accomplished at the expense of the mass, then "general welfare" is a false and anti-evolutionary principle.[79] Indeed, remembering how, as is commonly supposed, man has risen from the animal and higher races from lower, as the superior members of a species got an advantage over the rest and bred more successfully *their* kind (a higher species thus in time resulting), Nietzsche says that the principle, "the good of the majority is to be preferred to that of individuals," is enough to take mankind in the course of time back to the lowest animality, for it is the reverse principle, "individuals are of more importance than the mass," that has elevated it.[80]

Third, we have a measurement of healthy and sickly—health taken as covering body and spirit (things perhaps ultimately not so very different). Whatever Schopenhauer and Christian saints may say from their standpoint, from Nietzsche's those who turn away from life and exalt virtues antithetical to life are sick, and they rank lower, are less desirable members of the species, on this account. It is the sound and strong who keep alive our confidence in life—and their right to be, the prerogative of the bell with

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full tone, is a thousand-fold greater than the right of the discordant and broken; the latter undermine life and faith in life—they, and not the Bösen and "robber-animals," are man's greatest danger.[81]

Fourth, we can now measure egoism and altruism from a standpoint superior to either. Dr. Dolson, the first to publish a book on Nietzsche in America, says that "the one name that can be given" to his system "without qualification is egoism"; but she straightway begins to make qualifications—and really they are most necessary.[82] For all depends on who or what the ego is. The egoism of one who represents the rising tide of life is justified, though only in those who reach the highest crest is it completely justified, all the rest having their ends more or less beyond themselves. The egoism of the sickly and the degenerate, on the other hand, is not justified, it is rather something pitiful and revolting.[83] In a similar way altruism is justified so far as there are (or may be) others better than ourselves; altruism of this sort, carried even to the point of sacrifice, is justified. But altruism is not justified, when the "others" are not worth preserving and belong to those whose reason for existence has ceased to be (if it ever was).[84]

Fifth, life being essentially a process, a series of actions, a successive accumulation and expenditure of force, an adverse judgment is necessarily involved on viewing anything static, like pleasure or happiness, as an end. Life is not a means to enjoyment. The noble soul does not *wish* to enjoy, or if it does, only as it gives enjoyment.[85] Whether it be pleasure or happiness or Carlyle's "blessedness" or peace of mind or good conscience, any and all are but incidents by the way.[86] We are here rather to develop a certain kind and way of acting, and move toward a certain end; it is this and not any momentary condition or how we feel that is the critical thing. It seems to be taken for granted in many quarters that pleasure of some kind (gross or refined) must be the final end of every act, moral action only differing in that it seeks lasting pleasure, or the greatest or the highest pleasure, or others' pleasure as well

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as our own; that there is no *raison d'être* for an action save in the agreeable feeling it gives somewhere.[87] Nietzsche had argued more or less in this way in his purely critical period, but he has now come to give pleasure an entirely subordinate place.[88] He thinks indeed that it is the commoner sort of men who especially seek pleasure, the greater sort wishing above all to expend their force, more or less indifferent to pleasure and pain calculations.[89] He regards marked emphasis on pleasure and particular craving for enjoyment as "symptomatic": it indicates those who lack these things—a more or less suffering and unhappy class.[90] "Utility and enjoyment" are really "slave" theories of life, *i. e.*, of those who are overburdened and want relief from their hard lot.[91] The strong man is not after happiness—but he acts, acts successfully, and in that action *is* happiness: happiness comes without his seeking it; as Nietzsche puts it, it is *comes*, not *dux* of his virtue.[92] This does not mean contempt of happiness—Nietzsche knows its place as an adjunct in life.[93] He even gives to Utilitarianism a certain relative validity, it is the natural doctrine of the great working mass of men, and of those who take their standpoint.[94] But he absolutely refuses to take happiness (sensation of any kind) as the final measure of what is desirable, and has a kind of contempt for "green pastures and quiet waters" felicity, when it is made a universal ideal,[95] he even thinks that the "salvation of the soul" is a better aim and a fuller conception than the happiness which moralists talk about, since it covers the whole willing, creating, feeling self and not merely a secondary accompanying phenomenon like happiness.[96]

Sixth, Nietzsche's final principle involves judgment on the idea sometime advanced that we are to develop all the impulses of our nature. "Develop all thy powers? but that means: develop anarchy! Go to pieces!"[97] A ruling principle, a master impulse is necessary, something to bring all the rest of our being into order, and that is what a final aim like Nietzsche's does.[98]

And now I come to a paradox. Nietzsche honors on

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occasion those who risk their life or even sacrifice it. In general, indeed, he says that one should part with life as Ulysses did from Nausicaa—more blessing it than in love with it.[99] Is this inconsistent? Let us see. What is life, as he understands it? Heaped-up force which in turn expends itself, a continuous process of this sort. The acting, expending is the final thing, and doing this in a certain way, for a certain end, is to his mind the moral. But suppose such action puts one's existence in peril, what then? If persisted in, is life thereby despised? In a sense it certainly is—for we no longer set a supreme value on our existence. If we care for life above all else we may go far, but we shall stop short of *that*—it is the simplest dictate of prudence. And yet we find Nietzsche on occasion despising prudence. He even honors a strong sinner more than one who is held back by motives of this sort.[100] Those whom he counts great are always those who can transcend them. "I love him," says Zarathustra, "whose soul is prodigal," who "will not save himself." "What matters long life! What warrior wishes to be spared!" "Myself I sacrifice unto my love, and my neighbors as myself."[101] Nietzsche goes so far [he is careless of formal consistency] as to say, "much is more highly prized by the living being than life itself," and again, "men have become so pitiable that even the philosophers do not notice the deep contempt with which antiquity and the middle ages treated this 'self-evident value of values, life.'"[102] Have we then a contradiction? Verbally, yes; but not really in thought. The truth is that life can be taken in two senses: on the one hand it may mean the inner active process already described, on the other, something static and external, mere existence. Nietzsche implies the two meanings and puts the matter in a nutshell, when he says that to risk life is not to despise it, but rather to lift it to a higher potency.[103] The supreme act of life (in one sense) may be to lose it (in another). Even the life of the species, in the sense of its mere continued existence, is not the end to Nietzsche.[104] The great man, the genius, the superman, the final *raison*

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d'être for the human species, is himself above all a prodigal (Verschwender), that he spends himself is his greatness; the instinct of self-preservation is suspended in him, the mighty urge of the forces streaming out through him forbidding every such care and precaution.[105]

V.

A word as to the objectivity of Nietzsche's standard. He is sometimes said to give us only a subjective arbitrary morality,[106] being compared to the Greek sophists who denied all objective norms. The element of truth in such a view we have already seen—all morality is, according to him, the result of subjective demand somewhere; but in another way it contains more error than truth. Though ends are set by the intelligent will and have no existence apart from it, the particular end which Nietzsche himself chooses is something that belongs to the realm of nature itself, and, once turned into an end, it becomes as exacting, and as independent of individual caprice or even individual welfare in its requirements, as natural law itself could be.[107] An American writer from whom many seem to get their ideas of Nietzsche, but who unfortunately more or less vulgarizes him, says that completely rejecting "all fixed codes of morality," he leaves a man to "judge a given action solely by its effects upon his own welfare, his own desire or will to live, and that of his children after him."[108] There could hardly be a greater misunderstanding. For what has the ascending life of humanity necessarily to do with any chance individual's personal welfare, or that of his children, unless indeed they are a part of that ascending life, in which case their welfare is a matter not so much of personal, as of general moment? This writer says, "Nietzsche offers the gospel of prudent and intelligent selfishness, of absolute and utter individualism.[109] But Nietzsche expressly declares, "my philosophy aims at an order of rank, not at an individualistic morality";[110] he derides the morals of individual happiness, it is not science and not wisdom, but mere prudence mixed with stupidity;[111] he

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calls it the most immodest of *arrière-pensées* to measure good and evil from the standpoint of our personal selves.[112] Particularly when a man belongs to the descending line of life, is it a horror in Nietzsche's eyes when he says, "all for myself."[113] Ascending life and the highest possible ascent being the measure of things,[114] individuals are themselves good or bad as they belong to it or no,—at least as they further or retard it.

The standard is of such a nature that it is independent of personal feeling—or even opinion. Can one think, Nietzsche asks, of a madder extravagance of vanity than to judge the worth of existence by agreeable or disagreeable feelings?[115] One is not well because he feels so, he declares, any more than one is "guilty," "sinful," because he feels so—witches not only were believed to be guilty, but they thought themselves so.[116] By this he means that as health is a matter of objective physiological measurement, so is life, advancing life and the highest life.[117] The value of a "thou oughtst" is independent of opinion about it, as certainly as the value of a medical prescription is independent of whether one thinks scientifically, or like an old woman, about medicine.[118] The greatest sincerity avails nothing; nay, decisive and valuable actions are sometimes done without certainty.[119] It is most plain from utterances like these that Nietzsche has in mind, in his standard of value, something absolutely objective. It is even independent of our chance affirmation of it. To call an action good, he derisively exclaims, because our conscience says yes to it! It is as if a work of art became beautiful because it pleased the artist! As if the value of music were determined by our enjoyment of it, or the enjoyment of the composer.[120] All this subjective way of judging things that have really a law and logic of their own is abhorrent to Nietzsche.[121] Life is something objective to him; being at bottom an organization of power, its worth in any particular case depends upon how much power it incorporates and upon how high the level is to which the power attains.[122] The whole range of feeling, even of consciousness, is more or less accidental

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in relation to it. Feeling makes nothing good, and consciousness is a means to life, more or less a help, too much of it a hindrance,[123] but never a basic thing in life—he holds to the old Schopenhauerian view in this respect, which has points of contact with what is called the "instrumental" view now. Nietzsche himself speaks of the *necessity* of an objective valuation.[124] He believes that he *has* an objective value. He is in reality the opposite, as Professor Simmel has remarked, of the Greek Sophists or of a thinker like Max Stirner in recent times, for whom the only reality is the individual subject, each subject judging according to its own personal standpoint; in Stirner, not in Nietzsche, is the position of the Sophists revived.[125]

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[1] *Werke*, vol. XIV, p. 358, §223. I cite always from the octavo edition, except when otherwise specially stated. Individual works (appearing in different editions and more or less translated into English) I cite usually by paragraphs.

[2] *Will to Power*, §469. (I cite from the 2nd German ed.—the first ed. having been entirely recast. The English ed. follows the 2nd German, but I make my own translations.)

[3] *Werke*, XIII, 125, §282; cf. Dr. Grace M. Dolson on this point, *The Philosophy of Friedrich Nietzsche*, p. 63.

[4] *Beyond Good and Evil*, §32.

[5] *Werke*, XIII, 124, §281.

[6] *Will to Power*, §§399, 404.

[7] *Werke*, XIV, 312, §144.

[8] *Werke*, XIII, 176, §404.

[9] *Beyond Good and Evil*, §202.

[10] Conditions for passing from one form of existence into another included, cf. *Werke*, XIV, 313, §144, XIII, 139, §322. As to the conditions of life for a philosopher, cf. *Genealogy of Morals*, III, §8.

[11] *Werke*, XIII, 216, §510; *Will to Power*, §966 (cf. the use of "extreme immorality" in §246); *Ibid.*, §§914, 981, *Werke*, II, 239, §197.

[12] So only can I interpret *Dawn of Day*, §97; cf. *Joyful Science*, §335, *Werke*, XIII, 150, §355; 190, §421.

[13] *Werke*, XIII, 124, §280.

[14] *Will to Power*, §§330, 709, *Twilight of the Idols*, ix, §32.

[15] Cf. *Thus spake Zarathustra*, I, iii; also IV, xviii, §2 ("We have no desire to go into the Kingdom of heaven, we are men and desire a kingdom of earth").

[16] Numberless citations might be given; even praising and blaming are sometimes viewed from another angle, and to this extent justified, see *Werke*, XIII, 197–8, §435.

[17] Cf. *Dawn of Day*, §103, *Genealogy etc.*, I, §17.

[18] Cf. *Will to Power*, §§260–1, 953.

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[19] *Beyond Good and Evil*, §203, cf. *Zarathustra*, I, iii; *Werke*, XIV, 337, §186, cf. 335, §178.

[20] *Werke*, XII, 362–3, §895, cf. *Zarathustra*, I, xxii, §2; II, xx; III, xii, §3; IV, xvi, §2.

[21] *Werke*, XIV, 335, §178.

[22] Cf. *Will to Power*, §880 ("a *substitute* for morality through will to our end, and hence to its necessary means."

[23] *Dawn of Day*, §453, cf. §164. Nietzsche regards past moralities as really built more or less on hypothesis, but as man's mind was too weak and unsure of itself to take an hypothesis frankly as such, and at the same time make it regulative, faith (Glaube) was necessary (*Werke*, XIII, 139, §321).

[24] *Will to Power*, §1000, cf. *Werke*, XIII, 342, §894.

[25] *Werke*, XIV, 320, §155, cf. *W. to P.*, §583; *Werke*, XII, 357, §672.

[26] *Dawn of Day*, §453; *Werke*, XII, 357, §672.

[27] *Werke*, XIII, 80, §155.

[28] "There are questions where decision as to truth and untruth is not possible for man; all supreme questions, all ultimate problems of value are beyond human reason" (*The Antichrist*, §55).

[29] *Zarathustra*, IV, ix, *Genealogy, etc.*, III, §24.

[30] *Zarathustra*, I, i, Of the high view of man as creator (as well as created) expressed in *Beyond G. and E.*, 225.

[31] Cf. *Mixed Opinions and Sayings*, §329, *Dawn of Day*, §114, *Joyful Science*, §§3, 13, 77, 290, 294, *Zarathustra*, III, iv, xii (§2), IV, vi, *Beyond G. and E.*, §205, *Werke*, XII, 64, §116; 95–6, §193, XIII, 154, §363.

[34] *Werke*, XI, 390, §613.

[35] *Ibid.*, 371–2, §576; cf. 196, §102.

[36] *Beyond G. and E.*, §194.

[37] *Werke*, XII, 124–5, §244; 78, §150; 80, §155. Nietzsche remarks that Christianity has given the preference to sickness, and for good reasons (*Werke*, XI, 221, §156).

[38] *Zarathustra*, III, xi, §2; IV, xii, cf. *Joyful Science*, §321, *Werke*, XIII, 176, §404, XI, 220–1, §155 ("An impulse to live individually exists: I think in its service. Others who do not have the impulse cannot be obligated by me").

[39] Cf. *W. to P.*, §349.

[40] *Dawn of Day*, §108.

[41] *Werke*, XII, 360, §679.

[42] Nietzsche calls it the greatest error that taste decides about the value of a food or of an action, *Werke*, XII, 78, §150; cf. the remark about "actual relevance to the preservation of life, strict causality," *Werke*, XI, 204, §121.

[43] Letter to Krug, *Briefe*, vol. I, p. 321.

[44] *Friedrich Nietzsche, der Künstler und der Denker* (*4th ed.*), pp. 130–1.

[45] *Werke*, XIV, 355, §178.

[46] *Zarathustra*, I, x.

[47] *W. to P.*, §26.

[48] *Werke*, XIV, 74, §144.

[49] Cf. passages like *Human, All-too-Human*, §223, *Joyful Science*, §125.

[50] Lou Andreas-Salomé, *Friedrich Nietzsche in seinen Werken*, pp. 38–9. In a similar spirit Nietzsche speaks of the doctrine of eternal recurrence as *taking the place* of metaphysics and religion (*W. to P.*, §462).

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[51] *Zarathustra*, II, ii.

[52] *Werke* (Pock. ed.) VII, 486, §36. "God died: now we will that the superman live" (*Zarathustra*, IV, xiii, §2, cf. I, xxii, §3). Nietzsche quotes a passage from the Theages of Plato: "each of us would like if possible to be lord of all men, most of all to be God," adding "this sentiment must arise again" (*W. to P.*, §958).

[53] *Zarathustra*, II, ii. Still further, "God is a conjecture; but what I wish is that your conjecturing go no further than your creative will."

[54] Such a view, ever asking how man can maintain himself best, longest, most agreeably, is what makes men of to-day small and common (*Zarathustra*, IV, xiii, §3).

[55] Nietzsche once says in substance, "If there were a God, how could I endure not being him?" It is easy to scoff at such a saying, but if we go beneath the surface, we see that it is only an extravagant way of expressing the deeply felt obligation to be like God which is at the root of the saying of Jesus. Cf. the illuminating remarks of Prof. Georg Simmel, *Schopenhauer und Nietzsche*, pp. 204–5.

[56] *Zarathustra*, I, xvi.

[57] *Zarathustra*, Prelude, §3; cf. IV, xiii, §3 ("It is the superman whom I have at heart—*he* is my first and only, and *not* man . . . . . Oh, my brothers, what I can love in man is that he is a transition, a passing away"); also I, x ("Let your love to life be love to your highest hope: and let your highest hope be the highest thought of life").

[58] Cf. an early statement in "Schopenhauer as Educator," sect. 6, beginning "I see something higher and more human above me than I myself am." In a way the impulse rested on a need, a pressing one in his particular case, at home as he was with the tragic view of things: the need of something joy-producing. "Love to men? But I say, joy in men! And that this be not irrational, we must help to produce what will give joy." Hence selecting, seeking out and furthering those who give joy, and letting the misshapen and degenerate die out (*Werke*, XI, 247–8, §213).

[59] *Werke*, XII, 128–9, §248.

[60] *Zarathustra*, IV, xiii, §15.

[61] *Joyful Science*, §79.

[62] Cf. "A Minor Prophet."

[63] *Beyond G. and E.*, §60; so, "In the friend thou must love the superman as thy motive," *Zarathustra*, I, xvi.

[64] *Zarathustra*, II, xxi.

[65] *Genealogy etc.*, I, §12.

[66] *Werke*, XIV, 204, §405; 330, §166.

[67] *W. to P.*, §713, cf. of the descriptions in *Zarathustra*, II, xx.

[68] *Genealogy etc.*, I, 11 ("denn wir *leiden* am Menschen, es ist kein Zweifel").

[69] *Werke*, XIII, 213, §498.

[70] *Werke*, XIII, 141–2, §§327–9.

[71] *Twilight of the Idols*, V, §4, cf. *W. to P.*, §462.

[72] No one has developed this general view with more convincingness than the late Edmund Montgomery (*Philosophical Problems in the Light of Vital Organization*) the more interesting as the two thinkers had no acquaintance with one another.

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[73] Humanity must set its aim beyond itself, not, however, in a false world, but in its own continuation (*Werke*, XII, 362, §688; cf. XIV, 263, §10).

[74] *Zarathustra* I, xxii, §2. Zarathustra loves those who do not have to seek a reason beyond the stars for sacrificing (prologue, §4).

[75] Once crime against God was the greatest crime; now the most terrible thing is to sin against the earth (*Zarathustra*, prologue, §3).

[76] *W. to P.*, §674.

[77] *W. to P.*, §244.

[78] *Dawn of Day*, §106, cf *W. to P.*, §864 (towards the close).

[79] *Dawn of Day*, §106, *Beyond G. and E.*, §228, *Genealogy etc.*, I, note at the end.

[80] *Werke*, XI, 223, §160.

[81] *Genealogy etc.*, III, §14.

[82] *Op. cit.* p. 101.

[83] *Zarathustra*, xxii, §1. In the case of the "Siechen und Süchtigen," egoism (die Eigenliebe) "stinkt" (*ibid.* III, xi, §2). Cf. still further on the two kinds of egoism, *W. to P.*, §873.

[84] Cf. the general line of considerations in *Werke*, XIII, 181, §412. Dr. Dolson says that the existence of the altruistic instincts was "admitted" but "deplored" by Nietzsche—"one must conquer them" (*op. cit.*, 100). This is distinctly a mistake. Altruism is only deplored when exercised in a certain way. She is also mistaken in saying that the higher man in sacrificing himself sacrifices "only that side of his nature that finds expression in self sacrifice" (101)—he may sacrifice himself altogether, giving up his life.

[85] *Werke*, XIV, 95, §198, *Zarathustra*, III, xii §5.

[86] *Werke*, XII, 137–8, §266; as to the various meanings of peace of mind, cf. *Twilight etc.*, v, §3; as to "Seligkeit," see *W. to P.*, §911. Cf. Nietzsche's characterization of "enjoyment, coarse, dull, brown enjoyment, as those who enjoy life, our "educated" class, our rich and ruling class understand it (preface, §4, to *Joyful Science*).

[87] Cf. A. W. Benn, INTERNATIONAL JOURNAL OF ETHICS, Oct. 1908, pp. 19–21. But when Mr. Benn suggests that Nietzsche was prevented from accepting Utilitarianism by the pervading skeptical and negative cast of his intellect, aggravated by the use of drugs and by solitary habits, he is hardly sagacious.

[88] *W. to P.*, §928.

[89] *Werke*, XIII, 152, §359; 177, §405; *W. to P.*, §§579, 909, 1022.

[90] *Werke*, XIII, 152, §359, cf. *W. to P.*, §§781, 790. Christianity with its perspective of (future) "blessedness" is a typical way of thinking for a suffering and impoverished species of man (*W. to P.*, §222).

[91] *W. to P.*, §758. Hence the attack on Utilitarianism (whether egoistic, or universalistic), and, since England is its principal home, his sarcastic references to Englishmen. See *Werke*, XIII, 150–1, §§356–7, *Beyond G. and E.*, §§174, 188, 190, 225, 228, 260 (Utilitarianism); *W. to P.*, §§930, 944, *Twilight etc.*, i, §12 (Englishmen).

[92] *Werke*, XIII, 158, §367, *W. to P.*, §§1023, 1026; *Werke*, XII, 137–8, §266. Nietzsche also speaks in this way of love in its relation to reason and justice —it is *joy* in what is reasonable and right, the æsthetic side of the matter, but not a measure or judge of right, or anywise an independent principle (*ibid.*, 137, §265).

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[93] Cf. the recognition of Bentham and particularly Helvetius, *Werke*, XIII, 107, §§248–9.

[94] Cf. *Werke*, XIII, 150–1, §356.

[95] *W. to P.*, §957.

[96] *Werke*, XIII, 152, §361. For Nietzsche's various and varying views of pleasure and happiness, cf. *Werke*, XI, 219, §153, XIV, 88, §177, *W. to P.*, §260 (happiness reached in opposite ways and hence no basis for ethics); *Zarathustra*, prologue §5 (happiness as estimated by people of culture): *Dawn of Day*, §339, *Werke* XII, 148–, §295, *W. to P.*, §260 (old-time valuations and habit more or less *make* pleasure); *Werke*, XIII, 208–9, §477 (happiness distinguished from enjoyment, Genuss); *Dawn of Day*, §108 (the happiness of different stages of development incomparable, being neither higher nor lower but simply peculiar).

[97] *Werke*, XI, 277, §304. H. Goebel and E. Antrim do not take this into account when they speak among other things of "the right of the individual to obey absolutely all the instincts and impulses of his nature," as "Nietzschianism" (*Monist*, July, 1899, p. 571). Nietzsche also expresses himself in this way: "The opposite of the heroic ideal is the ideal of harmonious all-round development—a beautiful opposite and one very desirable, but only an ideal for men good from the bottom up (*e. g.*, Goethe)." This was written for and is quoted by Lou Andreas-Salomé (*op. cit.*, p. 25).

[98] Cf. in this connection the striking remarks on the modern educated man and on Goethe in particular (Kein Olympier!); *W. to P.*, §883, cf. 881. Many sides and forces are necessary to the great man, but they must all be yoked together in the service of one supreme aim.

[99] *Beyond G. and E.*, §96.

[100] *Zarathustra*, prologue, §3 cf. *Werke*, XI, 250, §§216–8, *W. to P.*, §909. The spirit of President Wilson's words, when Governor-elect of New Jersey (1911), is similar: "God defend us against compromise; I would rather be a knave, than a coward."

[101] *Zarathustra*, prologue, §4; *ibid.*, I, x. Cf. *Beyond G. and E.*, §13 ("a living thing will before all *expend* its force—self-preservation is only one of the indirect and most frequent results of this"), *Werke*, XIV, 314, §146 (humanity a mass of force which grows and must spend itself).

[102] *Werke*, XI, 223, §159.

[103] *W. to P.*, §929. A similar shade of antithetical meaning appears in what Zarathustra says to the higher men who come to him, "Better despair than surrender [to the petty people with petty virtues and policies who are lords of to-day]. And truly I love you, because to-day you do not know how to live. So do you live—best!" (*Zarathustra*, IV, xiii, §3). Heinrich Scharren puts the distinction in this way: "Not life as existence in general is the supreme value to Nietzsche, but life as will to power" (*Nietzsche's Stellung zum Eudämonismus*, p. 47).

[104] *W. to P.*, §864.

[105] *Twilight etc.*, ix, §44, cf. *Werke*, 335, §178. Prof. O. Külpe leaves these views out of account when he speaks of life at any price as the supreme value proposed by Nietzsche (*Die Philosophie der Gegenwart in Deutschland*, 3rd ed., p. 65). Prof. R. M. Meyer thinks that Nietzsche's own short life, inspired

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and productive as it was, was better than a long, healthy life would have been, filled with moderate labors (*Jahrbuch für das classische Alterthum*, Vol. V, p. 727).

[106] Cf. Prof. Arthur Drews, *Nietzsche's Philosophie*, p. 312.

[107] Prof. August Dorner (*Pessimismus, Nietzsche und Naturalismus*, p. 152) calls it a contradiction to turn a pure principle of nature into a principle of value. Valuing is indeed a distinct act of the mind, and an end as such has no independent existence, but is wholly relative to the mind and will that set it, but why may not the mind give supreme value to something actually existing (or developing)?

[108] Henry L. Mencken, *The Philosophy of Friedrich Nietzsche*, pp. 92–3.

[109] *Op. cit.* p. 102. These crudities are retained in the "fully revised" 3rd ed. (1913).

[110] *W. to P.*, §287. Cf. the general critical reflection: "Individualism is a modest and as yet unconscious sort of "will to power"; the individual thinks it enough to liberate himself from the superior power of society (whether of state or church). He puts himself in opposition *not as person*, but purely as individual; he stands for individuals in general as against the collectivity. This means that instinctively he puts himself on the same plane with every individual; what he contends for, he contends for not on behalf of himself as a person, but as the representative of individuals against the whole" (*ibid.*, §784).

[111] *Beyond G. and E.*, §198.

[112] *Dawn of Day*, §102. Prof. Frank Thilly does not bear this in mind in speaking of Nietzsche as standing for an extreme form of moral individualism, everyone striking for himself, etc. (*Hibbert Journal*, Oct., 1911, pp. 262–3).

Professor Simmel, on the other hand, makes all the discriminations needed, *op. cit.*, pp. 242–5.

[113] *Zarathustra*, I, xxii, §1.

[114] Cf. a statement like that of *W. to P.*, §354, or §373.

[115] *Ibid.*, §674.

[116] *Genealogy etc.*, III, §16, cf. *Werke*, XII, 148, §293.

[117] Cf. the suggestions of *W. to P.*, §291.

[118] *Werke* XIV, 402, §278, XIII, 129, §293–4.

[119] *Werke*, XIII, 134, §310; 135, §311.

[120] *Ibid.*, 135, §311; *W. to P.*, §291.

[121] Cf. as to music and the lack of an æsthetics of music at the present time, *W. to P.*, §§838, 842.

[122] *Ibid.*, §674.

[123] Nietzsche says, "Everything good is instinct," which is not the same as saying "Every instinct is good," a confusion to which even Prof. A. L. Pringle-Pattison comes very near (*Man's Place in the Cosmos*, 2nd. ed., p. 313).

[124] *W. to P.*, §707, cf. *Werke*, XIII, 135, §311 (a community's "advantage" distinguished from its pleasurable feelings).

[125] Simmel, *op. cit.*, pp. 233–4; cf. p. 245, "That this [Nietzsche's] doctrine should be taken for a frivolous egoism, a sanctioning of epicurean unbridledness, belongs to the most astonishing illusions in the history of morals." Dr. Ernst Horneffer has discriminating remarks on the subject, *Vorträge über Nietzsche*,

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pp. 80–1. The most extended and thorough treatment of Nietzsche's positive ethics is in the late Prof. Raoul Richter's *Friedrich Nietzsche, sein Leben und sein Werk* (2nd ed.)—see pp. 199–268 and particularly pp. 210 ff., 239 ff.; also the reference to Stirner, pp. 345–6. As to Stirner, see also Riehl, *op. cit.*, p. 86. A special literature has arisen as to the relation of Nietzsche to Stirner. It appears doubtful whether Nietzsche had read the latter's book (*Der Einzige und sein Eigenthum*); if he had, its influence upon him is inappreciable.

WILLIAM MACKINTYRE SALTER.

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BOOK REVIEWS.

PRELIMINARY REPORT ON EFFICIENCY IN THE ADMINISTRATION OF JUSTICE. Prepared by Charles W. Eliot, Moorfield Storey, Louis D. Brandeis, Adolph J. Rodenbeck, and Roscoe Pound. The National Economic League, 6 Beacon Street, Boston, Mass.

The National Economic League reacted to the nation's awakened conscience on the subject of courts and law enforcement by devoting a year to research exclusively in this field. The work was intrusted to Charles W. Eliot, Louis D. Brandeis, Moorfield Storey, Adolph J. Rodenbeck, and Roscoe Pound. A preliminary report has been submitted to the bar and the press. It is to be presumed that after comment and criticism the final findings and recommendations of the committee will be widely published.

The committee seems to consider a good diagnosis equal to half a cure. The report is powerful in analysis, following closely Professor Pound's published articles on dissatisfaction with the administration of justice. But little could be added to the report as a summary of the various causes, general and local, which contribute in varying proportion at various places to our failure to make justice a practical accomplishment.

No people have more laws or more machinery for producing laws, such as they are. No people have more courts and judges. Our loaded shelves bear witness to the volume of transactions. We are a practical people, or proclaim ourselves such, but—

The faults lie deep, it appears, but they are by no means ineradicable. We put our courts to unnatural stress in many ways for we are a people living by law, and one could be excused for thinking that we are also living for law. But the idea is gaining ground that courts exist for man, rather than the converse. A careful study convinces us that there is nothing inherently perverse in lawyers, judges, and juries. They are the proper and natural machinery of justice. But as with any piece of machinery, the parts must be themselves right, and must bear a right relationship to each other, if there is to be efficient production.

The American people have been jealous of lawyers. A naïve conception of democratic equality, manifested in earlier days

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by hatred of social and professional distinctions, keyed the attitude of the public toward that very necessary institution, the bar. A democratic bar has meant not a self-governing body, but a privileged trade overcrowded with half-educated lawyers, a profession so-called without organization, without leadership, without cohesion, without responsibilty to the state. This would not be so serious were it not for the fact that the bench must be recruited from the bar, and selection by popular vote is ill adapted to expert choice.

"In what may be styled fairly the classical period of American law the bench was for a greater portion of the time appointive, or, if elective, elected by the legislature and tenure was assured for life. Even after the movement for an elective judiciary gained strength about 1850, the traditions of the older order maintained a high standard for some time. Since the Civil War, except in New England, the bench has been elective with few exceptions and for the most part for relatively short terms. The constructive work in American law, the adaption of English case law and English statutes to the needs of a new country and the shaping of them into an American common law, was done by appointed judges while most of the technicality of procedure, mechanical jurisprudence and narrow adherence to eighteenth-century absolute ideas of which the public now complains is the work of elected judges. The illiberal decisions of the last quarter of the nineteenth century to which objection is made to-day were almost wholly the work of popularly elected judges with short tenure. Moreover where to-day we have appointive courts these courts in conservative communities have been liberal in questions of constitutional law where elective judges, holding for short terms, have been strict and reactionary."

In like forceful manner the report fixes blame upon the maze of legislative procedure which has grown up coincident with the elective judiciary. Many states have on the statute books from two thousand to three thousand procedural rules, which, enacted first for the purpose of compelling the judge to do what is right under certain circumstances, now often make it impossible for him to do the obviously simple and right thing under different circumstances.

These rigid rules, imposed by an alien authority, are largely responsible for the dependence of our popularly elected trial judges, who, in the words of Mr. Taft, are little more than modera-

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tors presiding over the contentions of counsel. Under such a perverted system the jury is afforded but little aid and becomes an utterly disproportionate factor in affairs.

A fault almost everywhere prevailing in the States is the lack of organization in the judicial branch. We have numerous specialized tribunals in every state whereas we should have one unified court with specialized judges, their activities directed by some central and responsible mind.

The beginnings of reform in this field are seen. The brilliant achievements of the Municipal Court of Chicago and others founded on its central idea of co-ordination and responsible authority, surely point the way to thorough judicial organization on a state-wide basis.

Nor is it unreasonable to hope for ultimate reform in the selection and tenure of judges. Direct nomination, however successful for the purposes for which it was adopted, makes the judicial office more than ever one that beckons to the lawyer demagogue. The judicial recall, now happily well threshed out in the press and on the platform, shows the inherent fallacy of the traditional form of electing judges, for a hundred judges are sacrificed through periodic elections for every one that is lost to public service through the recall. The short ballot prevails in many cities and makes progress as a county and state reform. In time short ballot ideals will be accepted for the judiciary.

The bar begins to react to external pressure. Proposals for a thoroughly organized bar, of which every lawyer must necessarily be a member, and in which every lawyer will have an equal and indefeasible right of control and consequent responsibility, are in the air. One of the obligations of such an organized bar would be the education of its novices and if the history of similar bodies in all other civilized countries is repeated, this work will be done with enthusiasm.

The report might be more complete and more explicit with respect to remedial proposals, but it is a valuable document as it stands, and must itself be taken rather than any cramped review, for exposition of this crucial question.

Copies of the report are to be obtained upon application to the National Economic League, 6 Beacon street, Boston, Mass.

HERBERT HARLEY.

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BIRNBAUM, KARL. Die Psychopathischen Verbrecher. Die Grenzzustände zwischen geistiger Gesundheit und Krankheit in ihren Beziehungen zu Verbrechen und Strafwesen. Pp. 1–568. Berlin, 1914. K. Langenscheidt.

This thorough and compendious book constitutes one of the eleven volumes of the *Enzyklopädie der modernen Kriminalistik*. The scope of the work may be better appreciated when the whole scheme of which it forms a part is understood. The other ten volumes of the encyclopedia are devoted to the Psychology of the Criminal (Vol. 1); the Criminal Police (Vol. 2); the Sexual History of Mankind (Vols. 4, 5, 6); Torture (Vol. 7); the Sexual Criminal (Vol. 8); Medicine and Criminal Law (Vol. 9); and Miscarriage of Justice and Recidivism (Vol. 10). It is evident that the plan of the whole work contemplates an authoritative résumé of the present status of our knowledge of this field. Psychology, Anthropology, Medicine, and Law are canvassed for their contributions to the problems of the nature and treatment of the criminal. We are here concerned only with the work of Doctor Birnbaum. The author's long experience as prison physician in a great city has afforded him admirable opportunities for observing the peculiar types of mental pathology to which he chiefly devotes his book. As the sub-title indicates, it is the borderland cases which receive especial attention.

After a discussion of fundamental concepts in a short section entitled General Orientation, the author takes up a description of the psychopathic types under the heading *Psychopathie und Verbrechen*. This section of nearly 350 pages constitutes the chief content of the book. Two other divisions follow: *Psychopathie und Strafwesen*, to which 122 pages are devoted, and *Die Strafrechtliche Behandlung und Versorgung der Kriminellen Psychopathen*, which end the book. In the General Orientation Doctor Birnbaum attempts to define the psychopathic borderland states. He points out that all sorts of disorders, organic as well as functional, permanent and transitory, acquired and inherited psychotic conditions, have been grouped in this category. Again, by other writers, the term has been used to designate merely the states which lie between the normal and the abnormal without more exact characterization. Such a use of terms is too vague to be of service. Birnbaum defines the psychopathic *Grenzzustände* as the pathological conditions of a less grave sort which rest upon an abnormal endowment, the constitutional

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psychopathies (p. 10). These individuals have been variously designated "degenerates," "psychopaths," and the "*psychisch Minderwertigen.*" At this point the author protests against the appropriation to pedagogy, law, psychology, or history of the psychopathic criminal on the ground that this individual belongs properly and peculiarly to psychiatry. Birnbaum states emphatically that, while related sciences may furnish helpful and suggestive points of view in the consideration of the psychopathic criminal, "whoever wishes to know psychopathic criminality must know psychopathic men; who knows only normal criminals may easily judge falsely of the psychopathic" (p. 11). The author's conception is made somewhat more definite in a discussion of the psychopathic borderland states and degeneration. By degeneration is meant "those unfavorable deviations from the normal type which rest essentially upon abnormal endowment" (*Veranlagung*). Abnormal endowment depends chiefly upon pathological traits of the germ plasm, and these pathological traits of the germ plasm show themselves to be inheritable. One may say, therefore, with approximate correctness, "the degenerate forms are those unfavorable pathological deviations from the normal type which are inheritable or which are inherited" (p. 12). In addition to the inherited degeneracy there is also an acquired degeneracy. Degeneracy, therefore, is twofold in its origin:

1. Acquired germ plasm injury (*Keimschädigung*).
2. Inherited "taint" (*Belastung*).

Unfortunately the author passes over the question of the inheritance of the primordium of degeneracy with the remark that it must be taken for granted. "*Sie muss einfach als Tatsache hingenommen werden, so gut wie die Erblichkeit normaler Anlagen auch. Ihrem Wesen nach ist sie ziemlich ebenso unbekannt wie diese*" (p. 12). With the acquired degeneration of the germ plasm the case is not much better. It is true that there are protoplasmic poisons (*Keimgifte*) such as lead, alcohol, and mercury. The toxins of disease, as, notably, syphilis and tuberculosis, are recognized as potent agents for harm. So, too, are the chronic diseases of metabolism, blood diseases, and tumors. Finally, all pathological processes which act during the intra-uterine life of the fœtus, such as mechanical injuries and intoxications, may produce deviation in the direction of defect. These degenerative phenomena may express themselves as morphological anomalies

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—the so-called stigmata of degeneration—or as functional deviations, such as defective sensation, abnormal motility, and defective mental capacities of a more general sort. Since the nervous system is the most highly organized structure of the body, it is also the most easily deranged. In the borderland states the derangement may take the form of a mere disposition to mental and nervous disease. Or it may assume the form of diminished resistance to anti-social tendencies. The terminology follows from the author's fundamental conceptions. Everything which can be traced to degeneration of the germ plasm is termed "degenerative." Therefore one may speak of "degenerative endowments," "degenerative traits of character," and "degenerative pathological states." Degenerative peculiarities are given in the primordium (*Anlage*). They are, therefore, of a constitutional nature. The individuals who exhibit mental and bodily signs of degeneracy may be called "degenerates" without the opprobrium which attaches to the term in the popular sense. If only mental deviations are present, the term "psychopath" may be used. The term "Minderwertigkeit" is condemned, although the author permits himself to use it from time to time, because it implies a judgment of value.

The criminal types, the description of which constitutes, perhaps, the most valuable part of the book, are distinguished and characterized mainly on the basis of psychological traits. In this respect Dr. Birnbaum is following the best teaching of contemporary psychiatry. It is interesting to note that the central point of the author's psychology of the criminal is occupied by the feelings. This central position of the affective life, related so intimately as it is to the whole of the volitional and social reactions on the one hand and judgments of value and habits on the other, offers for the author's purpose an adequate basis for the presentation of the varied forms of psychopathic personalities. Nearly twenty different types of psychopathic behavior are described. These types may be mentioned, although it will be possible to discuss only one or two: Pathological moral defect (moral insanity and the born criminal); General bluntness of feeling; Pathological defect of inhibition (*Haltlosigkeit*); Pathological exaggerated emotivity; Pathological impulsiveness; Pathological manias; Degenerate compulsions; Sexual psychopathies; Pathological moods; Pathological egotism; Pathological imagination (degenerative dreamers, phantasts, swindlers);

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Pathological liars; Pathological suggestibility and auto-suggestibility; Hysterical characters; Pathological grumbling; Degenerative feeble-mindedness; Chronic psychotic states of degeneratives; Complications with other disturbances (traumatic, alcoholic).

In order to give an example of the author's mode of treatment, we may consider his discussion of the degenerate feeble-mindedness. By this term Doctor Birnbaum means a generalized mental defect rather than a pathological lack of some particular intellectual capacity such as speech or number sense. One may take exception to the opinion expressed by the author that this defect in the power of making inferences is frequently the consequence of pathological emotivity. It is very difficult to understand how a modification in the emotional or affective reactions can produce the universal intellectual defect which one sees in typical cases of feeble-mindedness. To be sure, interest and attention are dependent upon feeling, and progress in school work undoubtedly depends upon normal affective reactions and capacities. But in marked degrees of feeble-mindedness the retardation of associative processes can be demonstrated by tests and situations independent of all systematic learning. Even in the fundamental, unlearned, social responses the lack of intellect is apparent. The reviewer doubts the existence of an intellectual defect which is dependent primarily upon perverted affective reactions. The author states emphatically, "A congenital (therefore primary) mental defect does not belong to the character of psychopathic, criminal natures. Criminal psychopaths without intellectual defect are therefore not only thinkable—the previous descriptions show it—but they do actually occur" (p. 278). This statement should be seriously considered by those American investigators who attribute to mental deficiency the chief rôle in the causation of juvenile delinquency. But while a primary mental defect is rare in psychopathic criminals, Birnbaum concedes the importance of various degrees of intellectual weakness in the psychopaths with anti-social tendencies. He traces both the intellectual deficiency and the criminal tendencies to a common source—a degenerate primordium. In the opinion of the reviewer Doctor Birnbaum attributes too much importance to the inherited factor. He has, of course, distinguished authority on his side. Mott and Tredgold in England and Goddard and Davenport in America, to name no others, have declared unequivocally in favor of a neuropathic inheritance. It is entirely possible, how-

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ever, and indeed, the progress of medical research makes it likely that the *degenerative "Anlage"* of Birnbaum and the *neuropathic "taint"* of the others is the consequence of definite toxic agents acting either upon the germ cells or upon the developing embryo.

H. C. STEVENS.

University of Chicago.

OUR KNOWLEDGE OF THE EXTERNAL WORLD; AS A FIELD FOR SCIENTIFIC METHOD IN PHILOSOPHY. Bertrand Russell, M.A., F.R.S. London and Chicago: Open Court Publishing Co., 1914. Pp. x, 245.

This book contains the Lowell Lectures delivered by Mr. Russell at Boston in the spring of 1914. In some respects it seems to me to be the most important contribution that has been made to philosophy for a long time past. Much of it is, of course, familiar enough to persons acquainted with the modern work in mathematical logic of which Messrs. Russell and Whitehead's *Principia Mathematica* is the greatest example; but unfortunately the number of such persons outside Cambridge is not large, and it is well that modern views about logic, number, continuity, etc., should have found a popular exponent who is at once an acknowledged master and the possessor of a singularly lucid and pleasant style. But the part that is most strikingly new and original is Mr. Russell's application of modern logical apparatus to the problems of the reality of the external world. He has altered his views on this question in a certain measure since he wrote his "Problems of Philosophy," and he tells us that the suggestion of the new view came from Dr. Whitehead. Anyone who has read Dr. Whitehead's most important paper on "Mathematical Concepts of a Material World" in the *Philosophical Transactions of the Royal Society* will be able to detect the germs of Mr. Russell's present method. This is the part of the book which, whether it ultimately prove tenable or not, seems to me to be the most hopeful step that has been made in philosophy since Leibnitz thought of his Universal Characteristic.

The book opens with two interesting chapters. The first considers current tendencies in philosophy; the second describes in general terms the logic that has been built up by Frege, Peano, and Mr. Russell himself, and shows how it is relevant to philosophy. The two tendencies which Mr. Russell describes and

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criticizes are the somewhat moribund idealistic tradition of Kant and Hegel, whose most distinguished exponent is Mr. Bradley, and the modern and very self-conscious schools of Bergson and the Pragmatists. Mr. Russell ascribes philosophical idealism to two sources: (1) the logical intoxication of the Greeks with the success of logical methods in mathematics, and (2) the very restricted and largely erroneous analysis of traditional logic. The former factor accounts for that undue confidence in the validity of abstract reasoning on very complex subjects which allows the idealist willingly to give up such fundamental aspects of the world as qualities and relations merely because they seem to be condemned by certain pieces of reasoning. An acquaintance with empirical science and its history leads us to be less confident of our reasonings, and to ask, when they lead us to such very odd conclusions, whether there may not be something wrong with them or at least with their premises. Needless to say, Mr. Russell does not deny that valid reasoning from true premises may lead us to results that startle common-sense; he only warns us to be much more circumspect than idealists generally have been when this happens. Again many of the most startling results of idealism come from a sheer defect in logical analysis, *viz.*, the view that all propositions ascribe qualities to subjects. In this Mr. Russell finds the logical basis of monism.

I cannot help thinking that this explanation of the belief in monism applies rather more accurately to quite modern idealists like Mr. Bradley than to Hegel or Spinoza. For instance it appears to me that Spinoza justified his monism mainly by erroneous views about the nature of logical and causal implication, while Lotze again justified his by certain prejudices about causation. I must, however, direct the reader's attention to the delightful footnote in which Mr. Russell traces the development of that portentous Hegelian monster, the "concrete universal."

The reaction against this too complete trust in an inadequately analyzed logic has led to Pragmatism and the views of MM. Bergson and Leroy. Mr. Russell has much sympathy with empiricism in so far as it substitutes the patient investigation of detail for pretentious philosophizing about the whole. But he has no sympathy with that condemnation of reason as such and that exaltation of human practical powers which spring from the observed difficulties of philosophy and the marked success of the application of science to daily life. He points out

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that a creature like man becomes "trivial and a little absurd" by the pretence of omnipotence; that to conclude inductively that man must progress indefinitely because motors have succeeded coaches and aeroplanes are succeeding motors is a piece of lunacy which no one not blinded by his personal wishes would commit; and that it is no part of philosophy to tell us about such concrete questions as the goodness or badness of the world and the destiny of the human individual. These must be left to the special sciences, and left without very much hope of even a probable answer. All this seems to be profoundly true, and also Mr. Russell's doctrine that we must try to philosophize without any ethical or volitional bias except a whole-hearted desire to understand. It is perhaps important to make clearer than Mr. Russell does that this does not prevent Ethics from being a philosophical science. Good and evil and their relations are sufficiently general to be subjects of philosophical discussion; it is the question what things in particular are good and bad and what proportion the good ones bear to the bad ones in the existent world that must be left to the particular sciences.

Mr. Russell has some excellent criticisms to make on Bergson, both in this introductory chapter and in the last one on causation. He points out that most of the work that Bergson imposes on intuition is done quite thoroughly by sensation and perception; that intuition is only to be trusted in matters that are of importance to the preservation of the species and proceed in a fairly fixed routine; and that even here it is liable to commit the grossest errors if left uncriticized by the intellect. He quotes here with great effect the favorable judgments of lovers concerning each other, which seem to them self-evident and yet are often contrary to the cool reflections of others and of themselves when they have fallen out of love. Finally he argues that, however true it may be that every psychical event is unique in some sense, this does not prevent us from being quite often able to predict the *kind* of mental event that will take place in a given man under given circumstances.

We now come to the general function which modern logic exercises in philosophy. In contrast to the older logic which closed possibilities one by one till the last left was taken as actual, modern logic provides us with two new powers. It enables us to analyze our original problems much more fully and accurately, and it enables us to see all sorts of possible solutions and to test

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them by making deductions from them. Such principles as that of Abstraction "enable us to dispense with an almost incredible amount of metaphysical lumber," and to see what are the fewest assumptions by which we can account for the facts. There is room for scientific genius or intuition here; for it will see which out of a number of logically satisfactory explanations is precisely the one whose premises are self-evident. Some problems have been insoluble simply through the lack of sufficient logical apparatus for dealing with them. Mr. Russell quotes the problem of the nature of false judgments which, he thinks, only became soluble when the existence of polyadic relations was recognized.

The rest of the book consists of particular illustrations of the application of these methods to various classical problems. In the lectures on continuity and infinity we are introduced in a remarkably clear and convincing way to the modern logical theory of these subjects. Frege's theory of numbers provides an admirable example of the use of the Principle of Abstraction. Mr. Russell introduces us historically to the question of infinity and continuity by a description of Zeno's paradoxes. He does not claim any infallibility as to his interpretation of what Zeno or Parmenides meant; but, whatever they meant, this plan is a useful one for introducing people to the questions of fact that are involved.

Then the same methods are applied to the question of the external world. Mr. Russell wants to get rid of unperceived and inferred things as the causes of sensations and to replace them by logical constructions involving nothing but actual sense-data. There is obviously a formal analogy between this procedure and Frege's definition of numbers as classes of similar classes instead of unique qualities inferred from the existence of collections. Mr. Russell's argument is that, as all physical theories that contain such notions as atoms or ether and their interactions with each other and our minds must start from sense-data and be verified by them, there must be some logical construction possible which shall give all that is verifiable in any physical theory in terms of sense-data alone. This was suspected by Mach, but lack of logical apparatus prevented him from solving in any detail the problems which such a view sets. And Mach's views are also vitiated in part by the haunting ghost of Berkleian idealism, and partly by the hypothesis of Neutral Monism which is now supported by the American realists. The

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latter view is rejected at present by Mr. Russell, though not dogmatically, and in any case it is best not to assume it at the outset, as it adds to the already great logical difficulties of a Phenomenalism such as he is trying to work out. Mr. Russell goes some distance with his reconstruction of physics, but fully recognizes that there is much further to go in the same direction. For instance, he here accepts tentatively as data for this logical construction the sense-data of other people as reported by testimony; but he hopes ultimately to construct a completely solipsistic physics.

It is impossible here to give an account of his construction; suffice it to say that physical things become classes of *sensibilia;* and that much use is made of the important distinction of the appearance of things from a place and at a place, "appearance" being here used in a sense that has no reference to a percipient mind.

There is a final chapter on Causation and Free-will, which is on the lines of Mr. Russell's paper to the Aristotelian Society. His conclusion is that determinism, though a by no means certain doctrine anywhere, is almost as certain in psychology as in physics; that it has no particular bearing on our freedom in any sense in which that is important to us, but only in the sense in which it ministers to a not very admirable form of self-conceit; and that most errors about causation are due to our confusing all causes with volitions.

The whole book is of extreme interest; and it abounds with good sayings. I will not give away to the future reader the reason why our anecdotes about meeting Bismarck are so very different from the grouse stories of our elderly neighbor, and will content myself with quoting for the benefit of teachers of logic the following admirable sentence: "The trivial nonsense embodied in this (the Aristotelian) tradition is still defended by eminent authorities as an excellent 'propædeutic,' *i. e.*, a training in those habits of solemn humbug which are so great a help in later life."

C. D. Broad.

University of St. Andrews.

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THE GREAT SOCIETY: A Psychological Analysis. By Graham Wallas. London: Macmillan & Co., 1914. Pp. xii, 406.

This book is as full of good things as one would expect from the author of "Human Nature in Politics." But perhaps partly because of the subject matter itself it is not nearly as coherent and self-contained as the older work. There are brilliant phrases such as "baulked disposition," and brilliant passages such as the description of municipal committees, but one misses the sense of structure and logical unity that infused the earlier book. It is impossible to travel in the modern world without being appalled by the chaotic size of modern cities and communities and feeling that such complex monsters cannot help being tyrannized over by mysterious and probably untrustworthy minorities. Mr. Graham Wallas tries to reassure such of his readers as have been convinced by Tarde and Le Bon that the psychology of the crowd is likely to disintegrate society but his consolations are, to say the least, half-hearted.

The whole problem, as he points out, is to organize the thought, will, and happiness of the community, but here again he succeeds much better in showing the weakness of existing attempts at social thought and its organization than the way to do anything more efficient.

The truth is that he unduly minimizes Hobbes's doctrine that fear governs society. The crudest proof of the importance of fear is the existence of European armaments as they are at present, but if Hobbes were alive, he would not fail also to note the necessity of timidity as the ruling influence of our time. The most obvious development of thought organization is clearly the modern newspaper and periodical; the author might well have devoted two chapters to an analysis of newspaper enterprise. He could have shown the enormous preponderance of all those forces that make for the suppression of the true and the suggestion of the false. To take one instance, I do not hesitate to say that there is an overwhelming resentment in England against the tyranny of certain superstitions, yet one will never find so much as a hint of it in the press. The proprietor fears the loss of social influence and financial prestige by ever allowing a word to appear in his paper that would ruffle the nerves of an archbishop, and this timidity is one hundredfold increased down the scale till we reach the men who report football matches, review serious books, and criticize plays. The public are content with what

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exists because they have experienced nothing better, but Mr. Graham Wallas knows as well as anyone that the newspaper represents current thought far less accurately than a suburban debating society, and that a vast cloud of unreality hangs like a pall over the British press. Yet the press is the one possible *medium* of collective thought; it would do wonders even if it merely gave an approximately accurate version of the facts. It is remarkable that the modern Collectivist welcomes any State enterprise except a State newspaper. The mere existence of a widely read international newspaper would be as good a preservative of international peace as can be imagined.

Mr. Graham Wallas's mind has so wide a sweep that his style becomes almost too rich and allusive. At times one is reminded of his favorite thinker, Aristotle; the page seems full of notes for a book rather than part of a book. But though this makes it stiff reading, no intelligent reader will grudge the trouble. The reflection is not only exuberant but fertile and will bear fruit in many future books. Those who do not share his optimism as to the social potentialities of human intelligence will at least find their own views as to the future considerably stimulated, not to say modified, by his book.

E. S. P. HAYNES.

London, England.

WORK AND WEALTH: A Human Valuation. By J. A. Hobson. London: Macmillan & Co., 1914. Pp. xvi, 367.

In this book Mr. Hobson breaks some new ground. He has, it is true, his customary little brush with the "marginalists" (pp. 182–6 and 331–5), but for that we are prepared and it is soon over. On the other hand, he seems at last to have despaired of persuading the world that "underconsumption," that is to say excessive saving, is the main cause of modern trade fluctuations, and of their resulting unemployment; that famous doctrine, though not formally retracted, is nowhere reaffirmed in this book. Mr. Hobson's present purpose is "to seek some intelligible and consistent method of human valuation for economic goods and processes" (p. v).

"Approaching on its concrete side the economic system, the human values of which we seek to ascertain, we find it to consist in a series of productive processes bringing various goods and services into marketable shape, accompanied by a series of

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consumptive processes in which these goods and services are used, wasted, or otherwise disposed of by those who buy them for personal uses. The former set of processes, as we have recognized, occupies a place of so much greater prominence and publicity as virtually to absorb the science of economics, leaving to the processes of consumption an obscure and entirely subordinate position. Our organic or human valuation starts with a protest against this assumption of inequality in the arts of production and consumption" (p. 28). In passing, let it be said that Mr. Hobson is somewhat obsessed by the "organic." Such phrases as "organic welfare," "organic standpoint," "organic value" occur with a frequency out of all proportion to their significance. For in truth they mean very little.

The general habit of economists, says Mr. Hobson, is to "conceive production entirely in terms of 'cost,' consumption entirely in terms of 'utility'" (p. 33), whereas "an organic interpretation of industry cannot accept this mode of conceiving the productive and consumptive functions" (p. 36). In fact, there are costs as well as utilities in consumption, utilities as well as costs in production.

In analyzing the nature and distribution, first, of the human costs of industry and, second, of its human utilities, he makes many good and interesting points. But it should be observed that the word "costs" is here used in a different sense from that employed in his earlier book, "The Industrial System." There "costs" were defined as "payments necessary to maintain the current output of productive energy in a factor of production," and the word is used in the same sense on pp. 177–180 of the present volume. But nearly always in this volume "cost" means simply any harmful, painful, or wearying effort—any "organic loss," perhaps Mr. Hobson would say—involved in any economic activity.

Chapter V on "The Human Costs of Labor" contains a good discussion of the phenomena of fatigue, and draws on sources of modern scientific information, both psychological and physiological, which are not yet part of the common knowledge of economists. As to women's earnings, Mr. Hobson takes the sound view, already propounded by Professor Cannan and others, that their inferiority to those of men is chiefly due to "legal, professional, or conventional restrictions which, precluding women from entering many skilled and lucrative employments, compel

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them to compete in low-skilled and overstocked labor markets" (p. 82).

It is sound doctrine, too, that the human costs of working-class saving are extremely heavy, and that it is the best social economy that the state, from resources available for taxation, should itself provide against the main emergencies and uncertainties of working-class life (p. 105).

Chapters IX, X, and XI, though rather diffuse, contain, perhaps, the best discussion of consumption in modern economics. Mr. Hobson begins by pointing out (p. 106) that the ordinary analysis of demand throws very little light on welfare, since (1) it deals only with "felt wants," that is to say only with things desired, and not with things desirable, and (2) it takes for granted the existing distribution of incomes. He proceeds to distinguish the organic, industrial, and conventional elements in the "standard of comfort," and discusses, with much acuteness, the nature of each. Regarding conventional consumption, some of his readers will think that he is too sympathetic toward working-class expenditure on drink, funerals, and the like (pp. 127–8). But the cruel and stupid view, not yet extinct, that thrift is a sufficient cure for poverty, invites excessive reactions.

In Chapter XII, "The Human Law of Distribution," it is urged that the ideal distribution of income is according to individual needs, a familiar thesis reinforced with some fresh illustrations and arguments.

In Chapter XIII, on "the Human Claims of Labor," Mr. Hobson suggests that "the real demand" of the Labor Movement "is that labor shall no longer be bought and sold as a dead commodity subject to the fluctuations of demand and supply in the market, but that its remuneration shall be regulated on the basis of human needs of a family living in a civilized country" (p. 190). Hence the movement for the minimum wage and the method of payment by salary, wherever possible, in preference to payment by time or piece. "The chief fight is for a secure weekly income, or for conditions of employment which lead up to this" (p. 196).

Chapter XV, on "the Distribution of Leisure," is sane and well-phrased. The better-paid workers show a healthy willingness to take part of their share of industrial progress in leisure instead of wages (p. 233). Leisure "supplies a counterpoise to specialization by the opportunity it gives for the exercise of the

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neglected faculties" (p. 237). Moreover, "leisure is a prime essential of democratic government. There can be no really operative system of popular self-government so long as the bulk of the people do not possess the spare time and energy to equip themselves for effective participation in politics and to take a regular part in deliberative and administrative work" (pp. 248–9).

Most of the remainder of the book, from Chapter XVI onwards, is rather thin and disappointing. There is a discussion of the basis of property, in which Mr. Hobson, like most other economists, quite misses the paramount importance of the institution of inheritance. "Setting property upon an intelligible moral and social basis" (p. 297), is an admirable phrase, but as expounded by Mr. Hobson an extremely vague process. A necessary preliminary is to face the fact that unequal inheritance of property is the chief cause of unequal incomes from property, and to consider what new restrictions, if any, should be placed on freedom of bequest, and what further taxes on inherited wealth.

Chapter XX, on "the Social Will as an Economic Force," is not merely nebulous, but positively mischievous. There is enough sloppy, muddle-headed thinking on economic and political questions already, without Mr. Hobson's invitation to "conceive society as a being capable of thought and feeling"! (p. 305).

Yet, on the whole, Mr. Hobson's book is comprehensive and stimulating, and deserves to be widely read. But some of his arguments are very vulnerable.

HUGH DALTON.

London, England.

THE FOUNDATIONS OF CHARACTER. By Alexander F. Shand, M.A. London: Macmillan & Co., 1914. Pp. xxxi, 532.

Mr. Shand is a well-known psychologist who has made it his business in this book to formulate certain laws of the working of primary emotions. As he points out, psychological interest in this matter is as rare in the older school of English writers, with the exception of Shakespere, as it is common in the older school of French writers. He formulated a number of laws with much care and precision in a way that must seem obvious to those who have studied character empirically. An English lawyer of the old school who picked up his legal knowledge by rule of thumb might as well understand the scope and object

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of a legal text-book as the student of character may misunderstand the scope and object of this book, but Mr. Shand soundly contends that the young might learn much by acquiring a general knowledge of his *formulæ* as an introduction to practical life. Proverbs of course come as near as anything we have at present to formulæ of this kind and are likely to impress all the more as they are concrete and colored instead of being abstract and neutral. Take, for instance, Mr. Shand's *formula* about sorrow. "Sorrow tends to be diminished by the close precedency and by the remembrance of other sorrow in our experience, and again by the perception of signs of sorrow round us and in some, though in a less degree, by the knowledge of such suffering." The mature reader's first impulse is to say he has learned nothing that he did not know before, and he might feel the same about Aristotle's famous description of the characteristics of youth, middle life, and old age in the Rhetoric. Yet the mere analysis of a *formula* that *seems* obvious leads to the acquisition of fresh knowledge. For example, the analysis of sorrow by Mr. Shand necessarily provokes further reflection on his own observations. Adam Smith very wisely remarks that the best cure for sorrow is to frequent the society of those who know nothing of our troubles. To follow such advice and generally to try and shake off sorrow may lead to surprising reactions such as may be observed in their most naked form at any Irish wake. Mr. Shand does not mention this but he provokes the reflection. The occasional codifying statutes in English law such as the Partnership Act, 1890, may not convey much that is new, *e. g.*, to practising lawyers in 1890 but they clarify the principles, *e. g.*, those of the law of partnership that have been applied since 1890.

For this reason, Mr. Shand's book should be in the hands of all teachers and especially of the young themselves. It has been welcomed in medical circles just as Darwin's "Expression of the Emotions" was. The literary references are exceedingly interesting, and the examples chosen from real life show shrewd and astute observation.

Mr. Shand writes very well but perhaps not quite concisely enough: one misses the pointed style of Adam Smith, such as we get in his remark:—"And if we consider all the different passions of human nature, we shall find that they are regarded as decent or indecent just in proportion as mankind are more or less disposed to sympathize with them." His book nevertheless is in

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the best tradition of the eighteenth century and for that very reason it may not appeal as strongly and widely as it should. It is new, its methods satisfy no biological or physiological curiosity, it is uncompromisingly abstract. It would be read with more curiosity in France than in England. But its sterling merits will at least attract the attention of the intellectually curious and perhaps in time lead to the British public interesting itself in problems of character and exercising its imagination in that direction. Anyone who considers such activity unnecessary had better read the next newspaper report of an ethical address or the remarks of a British judge to a criminal before passing sentence.

E. S. P. HAYNES.

London, England.

CHRISTIANITY AND ECONOMIC SCIENCE. By W. Cunningham, London: John Murray, 1914. Pp. viii, 111.

This is a course of very pernicious and reactionary lectures by a prominent ecclesiastic of the Church of England. Nominally, the lectures deal with "the influence of religious conceptions upon the historical development of economic doctrines and theories," but the arrangement is unsystematic and the style heavy and rambling.

If Dr. Cunningham is wholly to be believed, the Middle Ages were England's Golden Age. "The belief that God is the one supreme owner underlies the mediæval treatment of all questions" of property (p. 9). Work was commonly regarded both as a privilege and a duty (pp. 26–7), and the monastic system is "a standing witness to the effectiveness of spiritual influences in the affairs of secular life" (p. 36). The history of the monasteries, or at any rate, his own expurgated history of them, encourages Dr. Cunningham "to cherish hopes of the regeneration of society that may be accomplished, if spiritual influences are systematically and wisely brought to bear on the complicated problems of our own day" (p. 37).

On the other hand, "No wholesome human sentiments attach themselves to the advance of modern civilization. . . . Despite its discomforts and limitations, life in the Middle Ages was so far satisfying that few would have thought it either possible or desirable to get away from it altogether; but there are very few in our day who profess to find the conditions of modern life satis-

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fying in any sense at all" (pp. 83–4). Dr. Cunningham looks also to various "national policies" for the "regeneration" of modern England. "It was the glory of the Elizabethan age that Englishmen awoke to a sense of a national mission to exercise an active influence for good on distant peoples" (p. 97). Gold and rumors of gold had, apparently, no more influence on those Elizabethan crusades, than on a more recent "mission" in South Africa, of which, needless to say, Dr. Cunningham heartily approves.

The argument, inevitable in all Dr. Cunningham's writings, for a protective tariff, here called a "national economic policy," follows in due course (pp. 106–7), and the conclusion of the whole matter is that "it is glorious to attain a sense of national mission. Success or failure in the art of war depends on conditions that lead to success or failure in other arts; the benefit to character lies not in the fighting itself, but in the possession of ideals for which the citizen feels that it is worth while to make a sacrifice" (p. 108). Truly an astonishing peroration, worthier of Kipling in high fever than of an authoritative emissary of the "Prince of Peace!" These lectures were delivered before war broke out in Europe. Dr. Cunningham must be happier now.

HUGH DALTON.

London, England.

BRIEF NOTICES.

THE CAUSE AND CURE OF CRIME. By C. R. Henderson. National Social Science Series. Chicago: A. C. McClurg and Co. 16mo., pp. 175. 50 cents net.

In this little book Professor Henderson has in mind an audience, not of specialists, who do not need or read handbooks, but the great body of citizens in our democracy who are ignorant of the very facts of the subject to say nothing of their duty to change the conditions. Accordingly, the positions are very conservatively taken and the interest focused on the power that lies in the man in the street, and particularly the man in the pew to remedy evils that lie very close to his own dwelling. The reader is enjoined to visit his nearest prison and jail and compare it with a standard set forth in the book. There are ten chapters concerned with the Causes of Crime, Reactions against Crime, Methods of Procedure, Prisons, Administration of Punishment, Prevention, etc., closing with a chapter on The Power of Religion. In this last, the discussion is not, as one would at first be led to expect, a discussion of what religion will do for a criminal, but rather what religion ought to impel the reader of the book to do for the relief of intolerable conditions. The purpose which is evident throughout the book is not to startle the scholar with a new theory, but to attempt to overcome the worst of all the enemies of progress, the inertia of good men.

ELLSWORTH FARIS.

The University of Chicago.

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WHAT MEN LIVE BY: WORK, PLAY, LOVE, WORSHIP. By Richard C. Cabot. Boston and New York: Houghton, Mifflin and Co., 1914. Pp. xxi, 336. $1.50 net.

This delightfully written book sets forth many familiar truths in a charming and unfamiliar manner. There is no attempt to break new ground in theory but an evident recognition of the fact that much of the ground already broken is still lying fallow and needs to be put into a high state of cultivation. The personality of the author as it is revealed in these pages is of a genial, comfortable, optimistic physician who finds the traditional morality and faith quite sufficient for himself and who is mainly concerned in having us live up to what we know. The chapter on Jewels and the one on The Glory of Raw Materials are most suggestive.

E. F.

PROBLEMS OF CHILD WELFARE. By George B. Mangold. New York: The Macmillan Co., 1914. Pp. xiv, 522.

This is a scholarly and comprehensive volume dealing with the problems of childhood in practically every phase. The author points out that as society becomes broader in its outlook it accords more and more rights to its children. Having provided for the life and health of the children, society must assure them an education with an opportunity to play, and freedom from toil. So much for normal childhood. The defective children must likewise be taken care of since they are not in any way responsible for their misfortunes. Society owes them the comfort and care necessary to provide them the means of acquiring a decent living, and to prevent them from becoming a burden to themselves or to others. These general considerations give an insight into the specific problems that society is bound to occupy itself with in order to fulfill its obligations to those who are dependent for their welfare upon it. Dr. Mangold has brought together much valuable material bearing upon the nature of these problems, and also such data as can be gathered from the various sources indicating how some of these problems are being attacked, and with what success they are being met. A selected bibliography of eighteen pages is printed for the guidance of the reader.

J. KANTOR.

MODERN INDUSTRY: In Relation to the Family, Health, Education, Morality. By Florence Kelley. New York: Longmans, Green, and Co., 1914. Pp. 147.

A wide and varied experience lies behind the serious indictment which Mrs. Kelley draws against modern industry. There have been more extensive studies of single topics but perhaps nowhere could one find within the same space so comprehensive a statement of the dangerous tendencies of modern industry, not only in the more commonly noted relations to health, but in the less frequently exploited spheres of family and morality. The chief query is whether in painting the picture in nearly uniform black, the author is as effective as though some of the lighter shades were recognized. The lines of possible improvement emphasized are through legislation or other social control. The part which engineers and some enlightened employers play in the matter would seem to be worthy of mention, and as a minor point it might be added that the author is scarcely aware of the extent to which college and university teaching of ethics deals with the present conditions of industrial society. The few, of whom the author has been one of the foremost,

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who so long seemed almost alone in their efforts for better conditions, have perhaps gained more recruits than they know.

THE ABOLITION OF POVERTY. By Jacob H. Hollander. Boston: Houghton Mifflin Company, 1914. Pp. 122. $0.75.

The title of this lucid and authoritative book written by an economist is itself an indication of how far we have come since the time when economic laws were regarded as not only explanations of why things are as they are but likewise as a reason why they could never be any different. The doctrine of the general body of economic students is now declared to be "that poverty, understood as economic inefficiency, is an incident of industrial evolution, not an essential of economic structure; that its presence implies maladjustment, not normal working; that its control may be effected by wise social policy, and that its ultimate disappearance is a fair inference from the facts of economic experience." Successive chapters on the Social Surplus, Distribution of Income, Rate of Wages, The Unemployed and the Unemployable, point out, not indeed immediate cures for all types of poverty, but the lines along which steady progress may be made if once the public mind is ready to undertake large measures in resolute spirit under scientific guidance. "The conquest of poverty looms up as an economic possibility, definitely within reach—if only society desires it sufficiently and will pay enough to achieve it."

JEWISH IMMIGRATION TO THE UNITED STATES 1881–1910. By Samuel Joseph. New York: Columbia University Press, 1914. Pp. 209.

An excellent study of Jewish immigration to the United States during a period of thirty years, with its causes and characteristics. Among the characteristics having an ethical bearing are mentioned the permanence of Jewish settlement, and the fact that Jewish immigration is essentially a family movement. It is pointed out that family immigration, which is closely connected with permanent settlement, gives vitality to the spirit of social solidarity, and communal responsibility.

THE CULTURE OF ANCIENT ISRAEL. By Carl Heinrich Cornill. Chicago: The Open Court Pub. Co., 1914. Pp. 167.

This little volume consists of a collection of five papers by various translators, dealing with the history and education of the early Hebrews. The education of the early Hebrews was directed toward the end of solidifying the family at the head of which was the father, who ruled as an absolute monarch. Upon such a basis it may be surmised that the training each member received was rigid and made for an adequate preparation for the battles of life. This type of training Professor Cornill states has reflected upon the staying powers of the race. The book closes with an instructive estimation of the Psalms as *Weltliteratur*.

WAR'S AFTERMATH. By David Starr Jordan and Harvey Ernest Jordan. Boston: Houghton Mifflin Company, 1914. Pp. xxx, 104.

A preliminary report of an inquiry made into the effects of war upon human stock as tested by conditions in certain parts of Virginia and Georgia. It was found impracticable to make a mathematical estimate or rigid calculation of race loss, but large numbers of representative men were interviewed and the result formulated in thirty propositions which were in turn put in a questionnaire and sent widely through the South for comment and criticism. A summary of this is given, leaving the reader

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largely to draw his own inferences. "A just weighing of all this evidence, however, leaves a decided balance in favor of grave racial hurt in consequence of war, and this certainty is cumulative, becoming more definite with the consideration of each new area."

RELIGIOUS DEVELOPMENT BETWEEN THE OLD AND THE NEW TESTAMENTS. By R. H. Charles. New York: Henry Holt & Company. Pp. 252. The Home University Library.

This is a clear and interesting presentation of the results of studies which show that there was no "period of silence" between the Testaments. On the contrary that period was one of great intellectual activity and advancing moral insight. The realization of this fact has been hindered by the exaltation of the Law by Jewish tradition as the completion of revelation. To some extent the Apocrypha, but mainly the Pseudepigrapha, written between 180 B. C. and A. D. 100, show the transformation of the entire world of Old Testament conceptions. This literature was probably written for the most part in Galilee where the seer and the mystic developed a freer attitude and expression than the legalists of Judæa. From this center came Jesus and eleven of his disciples. The author traces the development of the conceptions of the Kingdom of God, The Messiah, The Future Life, and the doctrine of Man's Forgiveness of His Neighbor. The ethical progress in the idea of forgiveness is particularly impressive. In the Old Testament the penitent could accept and enjoy the divine pardon and yet cherish the most bitter feelings towards his personal enemy. "A Jew, however, if he chose to act towards his personal enemy, could justify his conduct from his sacred writings." From the Testaments of the XII Patriarchs, a work of the second century B. C., quotations are given which are remarkably perfect parallels in thought and diction of Luke XVII: 3, and Math. XVIII: 15, 35.

E. S. AMES.

PHILOSOPHY, WHAT IS IT? By F. B. Jevons. New York: G. Putnam's Sons, 1914. Pp. v, 172.

This volume consists of five popular lectures on Philosophy. It endeavors to show that Philosophy is an attempt to find the meaning of experience as a whole. The conviction that experience as a whole is the conviction that there is a perfect Personality, who is God. The ethical implications, if any are intended, are to be found in the relation of the imperfect to the Perfect Personality.

WOMEN WORKERS IN SEVEN PROFESSIONS. By Edith J. Morley (Editor). London: George Routledge and Sons, Limited, 1914. Pp. xiv, 318.

VOCATIONS FOR THE TRAINED WOMAN. By Eleanor Martin and Margaret A. Post. New York: Longmans, Green & Co., 1914. Pp. xvii, 175.

These two volumes consist of numerous studies made with a view to placing women in profitable and congenial employment. The first is based on investigations conducted in England; the second on work done in New England, particularly in Massachusetts. The employments considered are of many varieties, comprising among others, medicine and surgery, various kinds of teaching, social service, and even agriculture. The work represented by these volumes when it is seriously considered uncovers a host of problems that have an obvious ethical bearing. There are at once suggested the questions that arise from the relation of such two factors as, the expectation of receiving a salary which should adequately represent services rendered, and the facts of supply and demand.

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APPEARANCES. By G. Lowes Dickinson. New York: Doubleday, Page & Co., 1914. Pp. x, 221.

The "Appearances" are impressions of India, China, Japan, and America. Underneath the comments of a keen even if extraordinarily narrow-minded observer is the attempt to present the fundamental antipathies between West and East. India stands pre-eminently for the religion of the Eternal, the West for the religion of Time. China and Japan rank rather with the West than with India. The author's esthetic sympathies are largely with the East. On the other hand, the West, hateful and fatuous as are many of its inventions and its modes of industry, is adventurous on a quest "to secure a society more just and more humane." The part which deals with America, as the author says in his preface, has a note of exasperation. The temper, in fact, is quite similar to that which one finds at present in Teutonic discussions of England. Without any of the difficulty which Burke felt in drawing an indictment against a whole people and without any of the discrimination which we like to associate with scholarship, Mr. Dickinson writes down the American "from east to west, from north to south, everywhere and always the same —masterful, aggressive, unscrupulous, egotistic . . . valuing nothing but success . . . a predatory, unreflecting, naïf, precociously accomplished brute." America has "contributed so far nothing to the world except material prosperity." An American is obliged to wonder a little just how much of America Mr. Dickinson saw, and to venture a query as to whether such wholesale and unqualified damnation and scarcely qualified contempt should really be published unless supported by a broader observation than is evidenced. Fortunately Mr. Bryce was not satisfied with "appearances" but thought it worth while to study America.

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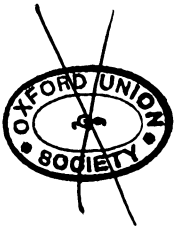

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THE INTERNATIONAL
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APRIL, 1915.

PHILOSOPHY AND THE NEW JUSTICE.[1]

HARRY ALLEN OVERSTREET.

I.

IN ITS primitive form, justice was the assignment of rights and duties in terms of the groups to which persons belonged. There was a justice for the tribal member and a justice for the stranger, a justice for the conqueror and a justice for the conquered, a justice for the noble-born and a justice for the serf, a justice for men and a justice for women. What was humanly due an individual, in brief, had relation not to his personal merit or power or achievement but to the comparatively accidental group-position which he held.

To the modern mind such an assignment of rights is, in its grosser forms at least, wholly abhorrent. The matter has indeed passed beyond the stage of argument: the wrong of such an assignment is, to us, axiomatic. There is the instant awareness that justice must be measured in terms of the quality of the individual—his motives, merits, powers and achievements; must be measured, in short, in terms of natural, rather than of artificial considerations.

The history of our more recent civilization indeed has been little more than the prolonged effort to bring such

[1] Read at the Joint Meeting of the American and Western Philosophical Associations at the University of Chicago, December 28, 1914.

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"natural" justice to realization, to make rights fit deserts, to make obligations fit powers. In that effort, the most pressing need, historically, was to rid life of the burdensome system of conventional and arbitrary social distinctions. It was necessary to take away the unfair handicaps, to start men even in the race.

At the threshold of our own century, in America, it was deemed possible to do this by guaranteeing to all persons the protection of certain rights—"natural rights," so-called. These were the broad rights to life, liberty, the pursuit of happiness, and the possession of the external means to happiness, property. Once these rights were adequately protected—and adequate protection meant on the whole the prevention of obvious distraints—it was assumed that "natural" justice would be accomplished, in the sense that every man, free to exert himself equally with every other, would secure life goods in direct proportion to his efforts and his worth.

The typical outcome of this view is the conviction prevalent in the democracies that a man is entitled to the opportunities and satisfactions which he can *afford*. The older group-principle entitled him to what his group-position assigned him. "If a Brahmin requires any article for a sacrifice which he cannot find handy, 'he may take at his pleasure, two or three articles from the house of a Sudra, for a Sudra has no business with sacrifices.'"[2]

The ordinary democratic conviction, based upon the assumption that, with the removal of artificial restrictions, all persons start even in the race, holds that what a man wins he must win through his individual effort.

If this were a theory as to a desirable condition of life we might be able to accept it without serious question. But the noteworthy fact is that it is apparently, in large measure, a theory as to an actual condition of life. It is the conviction namely that all artificial hindrances of any considerable importance have, as a matter of fact, been removed; and that the resources of men, therefore, are a

[2] Hobhouse, L. T., *Morals in Evolution*, I, 302. (*Manu.* ix, 13.)

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fairly accurate index of the efforts which they have made in the running of their life race.

It may be objected that this is not in truth the modern conviction, that the thought is widespread among us that the riches or the poverty of men are an index not so much to the merit or demerit of individuals as to the good or ill luck of their placing in life, the advantages or disadvantages of their parentage and environment. And yet I feel that I am correct in saying that the prevalent modern conviction is that on the whole men get what they are capable of and should therefore get what they can afford. If this were not the conviction, it would be inconceivable that the glaring inequalities of condition and opportunity would be regarded with the comparative unconcern that is now almost universally in evidence. The street cleaner, to most of us, until we think sharply about it, is a poor stupid animal; the garbage man a person without the higher possibilities; the dwellers in tenements, the servants in our kitchens, are persons to whom indeed we owe pity; but they are to us really a "lower" class,—lower in capacity and power; and if they get less of life-goods, it is because they contribute less and so deserve less. The principle is more subtly in evidence in our acceptance of the fact, as a sheer matter of course, that one man has an income of a thousand a year and another an income of five thousand. We order our lives, in short, on the theory that men should be enabled to get and to possess what their resources will secure for them.

Without discussing at this stage the adequacy or the inadequacy of this widely prevalent conviction as to the just deserts of men, it is significant to note that a new conception, in promise profoundly reconstructive, has of late years quietly slipped into our social thought and organization. It is the conception that where individuals have fundamental *needs* which no exercise of their individual powers can adequately fulfill, these needs must be met by the organized resources of society. There is, for example, the need for a proper training of mind and body.

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On the prevailing principle that each person shall have what he can afford, such training, with the necessary equipment of libraries, laboratories, teachers, etc., is completely beyond the reach of most persons. But such training is increasingly recognized to be a fundamental need, and therefore a fundamental right. Since then the individual through his unassisted powers cannot secure this essential need, it is deemed just that the collective power of society shall supply it to him; or, to express it more accurately, it is deemed just that he shall be permitted to join with his fellows to secure through joint action what he cannot singly secure.

Here is the thin blade of an entering wedge which threatens ere long to split asunder the whole block of our traditional assumptions as to the just relations between the life-goods which men may enjoy and the resources which they have at their command. For as we scrutinize the life-processes with an eye to discovering how many thoroughly essential needs are unfulfilled in individual lives precisely because the power of individuals is incapable of realizing them, we find them disclosing themselves in bewildering number.

There is, for example, the need for access to productive employment. If the provision for employment is a matter wholly within the control of the individual there is involved no further social obligation. But if, as is quite obvious, the organization of employment is largely beyond the control of the single person, the obligation rests with the collective body to make employment secure. The workers of to-day are therefore apparently right in their contention that the phenomenon of unemployment is a situation calling not for charity but for justice; for the awareness, in short, of an obligation on the part of society to meet a fundamental life need.

Again, there is a need for protection against a debilitating wage and debilitating conditions of labor. If the single person were able to protect himself, there would be no further obligation; but if industrial organization is such

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that he has in himself no real protective power, the obligation is upon the collective body to secure him in his fundamental right. That society in this matter still places the *onus* upon the single person, compelling him, if he would protect his interests, to resort to various shifts of collective boycott and strike, is indicative apparently of the failure of modern society to realize as yet the precise nature of its just obligations.

It is in this connection that we view with such astonishment the decisions of the high courts of America pronouncing null and void laws passed to guarantee decent conditions of labor—eight-hour laws, laws requiring payment of wages in coin of the realm, laws requiring payment of wages on day of discharge, laws against sweatshop work, workmen's compensation laws, laws declaring the maximum of working hours for women, etc. In all these cases the courts, ostensibly acting for the good of individuals, have failed to realize that the good in question can be secured only through social means.

But the needs range farther and deeper. Physical health is a wholly fundamental need. It is here that the prevalent view that a man shall receive what he can afford has been most obviously in evidence. It has been taken for granted that a man might properly be expected, through his own resources, to look after his own health and the health of his family. Such a view is being in many ways challenged by present conditions of life. It may be said, I think, without error, that only a very small proportion of the illness of persons in present society is traceable to individual neglect or misuse of powers. Most illness is social in its origin, the causes being either compulsory overwork, insanitary surroundings, economic anxiety, unavoidable accident, or contagion. To cast the burden wholly upon the individual then is to fail to recognize this social origin of disease. But the difficulty cuts deeper. Where the responsibility for the protection of health is placed wholly upon the individual, misfortunes are suffered by dependent wives and children in a measure beyond

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their power to avert. The child of a poor man falls ill. It is a case for a specialist, perhaps for a number of specialists. The "hire" of these experts is beyond the resources of the individual wage-earning parent, and as a result the child dies. Here obviously is an invasion of the fundamental right of this child to the protection of its life, a protection which it cannot itself secure, and which its parent cannot secure for it. I know of no more glaring example of the complacency with which modern society accepts its principle that to each shall be given what he can afford than the unprotested spectacle of wives and children who suffer and die in countless numbers simply because their husbands or fathers are unable to secure for them adequate medical service. Nor is the spectacle much less deplorable in the case of the family heads themselves, who, in many cases must suffer the slower or swifter invasion of disease because of economic inability to secure the requisite advice and care.

Modern medicine, moreover, exhibits more and more the principle of team-work—the co-operative efforts of specialists, nurses, analysts, etc., in the pursuit of the complex problems of organic disease. Access to such team-work is wholly beyond the resources of the ordinary individual. The alternative confronts us, therefore, of either suffering the individual to put up with what little of makeshift attendance he can afford, or of securing for him the more adequate service.

The thin edge is undoubtedly entering here. The collective organization of medical aid is already in evidence in the new type of medical boards, in medical inspectors of schools, school nurses, public clinics, public hospitals and sanatoria. It is in evidence, too, in a type of organization which promises, I think, to be of commanding importance in the future. At the University of California, I happen to know—and there are other instances throughout the country—the student body is so organized that by the payment of a small annual fee, each student is given the privilege of all the medical attendance and hospital

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care which at any time he needs. Here is a pooling of resources which goes directly counter to the prevalent individualist principle of our modern life. It propounds the counter principle that through the co-operation of resources services shall be rendered as the needs dictate, not as the individual purse can afford.

Again, fundamental among the needs of men is the need for an impartial scrutiny of their rights at the bar of justice. The prevalent view has been that that scrutiny shall be very largely what men can afford to secure. The man with a regiment of attorneys has unquestionably an advantage over the man who with extreme self-denial can secure the services of but one overworked and mediocre minion of the law. Moreover, the man with abundant resources has a power of prosecuting appeals that is utterly beyond the power of the poverty-man. Here again new conceptions are slowly making headway. Society is indeed yet far from seeing the precise way out of its difficulties, but the prevalent scorn with which the old high-sounding phrase is now-a-days received that "all men are equal before the law," is indicative of a keen sense of the essential injustice of the present commercialized scheme of legal service. Unquestionably, the signs point to the same type of solution in this case as in the case of education and medical aid—the socialization of legal service, the co-operative pooling of resources so that all men may have equal access to legal advice and aid. In a partial sense, legal aid societies are pointing the new direction of legal organization. These societies employ attorneys *to serve the group*, and in so far give equal opportunity for legal aid to every member of the group. Here is the advance from a commercialized system of legal service which thrives upon the inequalities of men, which tends in fact to develop and perpetuate such inequalities to a socialized system of service organized in the spirit of equal opportunities before the law. "To plead the cause of justice," says Lowes Dickinson, "is a noble act; but to sell a knowledge of law to

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the highest bidder, without reference to the equity of the case, is the meanest of all forms of barter." [3]

II.

A review of such fundamental needs as the foregoing—and there are many more to be found, as, for example, the right to be decently born, to choose occupation freely, to be protected against a purely sex discrimination, to be protected against trade deceptions, etc.—and a recognition of the ordinary inability of individuals by themselves to secure such needs will be sufficient to indicate the new type of services which modern society is in all justice obligated to render its members. But we have thus far touched only the outer edges of our problem. There is a growing conviction that the centre of the modern problem of justice is found in the fundamental economic relationships. Are the economic processes such that every person in present society receives his human due? The question is one that needs no explicit answer. Whether we analyze the economic situation with discriminating care or view it in its larger effects, the conviction is well-nigh universal that economic processes, as at present organized, are such that an equitable apportionment of reward is but rarely in evidence. And by apportionment of reward I mean not simply the distribution of money income, but the opportunity for the healthful and stimulating exercise of powers, the satisfaction in results accomplished, the joyous anticipation of work to be done. Here is the tragic aspect of modern civilization—the spectacle of powers suppressed, of interests thwarted, of eager possibilities ruthlessly murdered. Here unquestionably is the heart and soul of injustice. And as it is so, the strong savior of modern justice must be the organizer of economic ideas.

We witness here, however, a somewhat discouraging situation. The most vital problem of justice which we face to-day is, as we have said, the problem of economic

[3] *Justice and Liberty*, p. 73.

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reorganization; and yet I think I am not unfair when I say that the science which has gone by the name of economics is in its conventional form unable effectively to grapple with that problem. A careful scrutiny of the three master concepts with which the conventional economics deals—the concepts of utility, cost, and value—indicates that these are so neutrally defined as to make a human evaluation of the processes in which they are involved practically impossible. If, for example, as the conventional economics assumes, all desire-satisfying goods are utilities—the painting of a Rembrandt and the licentious pictures of a degenerate; if, again, all efforts are costs—the drudgery of a factory automaton and the creative effort of the poet or inventor; if, finally, value, in the prevalent economic sense, is measured wholly in terms of exchange possibilities, so that the value of a good book is no more than the value of a burglar's black-jack, it follows that, with such broad definitions of these basal concepts no discriminating human evaluation of the economic processes is possible. I am not passing a hostile criticism upon economics. I am stating a fact, a fact which economists themselves frankly admit. The same shortcoming is exhibited in the prevalent concern of economics with the productive aspects of industrial processes to the almost entire neglect of the distributive aspects.[4] It is obvious then that the great need of the present is for the development of a new type of economics, an economics that will so define its fundamental concepts and so organize its interests as at once to maintain the distinctly economic character of its inquiry and yet to give to this inquiry the quality and the power of human evaluation.

I think that without any question a new economics is forming, and that in the development of it the social philosopher will play no inconsiderable part. For there are many indications that economists are awakening to the essential inadequacy of their conventional psychology, that they are realizing the need for a reconstruction of their

[4] Hobson, J. A., *Work and Wealth*, Chap. I. (Macmillan.)

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ideas about the human personality that plays its part in economic processes. This is sharply expressed by a distinguished American economist in a recent number of the *Quarterly Journal of Economics*.[5] "It is because they are developing a sounder type of functional psychology," he writes, "that we may hope both to profit by and to share in the work of contemporary psychologists. But in embracing this opportunity economics will assume a new character. It will cease to be a system of pecuniary logic, a mechanical study of static equilibria under non-existent conditions, and become a science of human behavior."

An economics based upon a more adequate conception of human personality will, we may venture to expect, be far less tender than the conventional economics has been toward the ethically indefensible institutions of profit, rent and interest, toward the prevalent undemocratic form of business organization, and toward the privilege-breeding principles of inheritance and bequest. It will doubtless see in them factors that militate in a triple way against the realization of essential justice: first, in so far as they develop such inequalities of resource as in large measure to thwart human personality; second, in so far as they breed in the economic participants an attitude egoistic and anti-social; third, in so far as they deny to large numbers of persons any adequately vital participation in the economic processes and interests. The problem of economic justice for the new economics will be to bespeak such an organization of the industrial processes as will, in these three respects, meet the essential human needs.

III.

From the foregoing discussion there has emerged the first part of the determinant principle of justice: to each person according to his needs. The principle, of course, has been expressed many times. I make no attempt in this paper to establish it but simply to set it forth. What is

[5] Mitchell, Wesley C., November, 1914.

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peculiarly of our own time in the above elaboration of it is the recognition that there are many needs which cannot be met by individual efforts and which must accordingly be fulfilled through the social organization of life resources. Here, I take it, is the aspect of justice which has gained the modern name of "social justice"—the exercise by society of its collective powers in support of the legitimate claims of individual life.

With this principle—to each according to his needs—goes, however, the essential correlate: from each according to his realized capacities. For obviously to meet fundamental needs is *ipso facto* to develop fundamental capacities and to give to society the right to claim their exercise. Where on the other hand, however, without blame to the individual, capacities are left undeveloped, there can be no just claim upon the individual for their use. In this respect I think it is quite obvious that present society demands of many of its members far more than their capacities warrant, and in so far treats its members with a more or less flagrant injustice. To demand that a man harassed and devitalized by conditions beyond his own control shall be the sole responsible support of his family, that he shall contribute a share to the society which permits his exploitation, is to demand beyond capacity. To demand again, as our law does, that a man without employment shall unprotestingly, with law-abiding mildness, witness the slow starvation of wife and children is to demand beyond human nature. These are indeed the more flagrant cases, but in all manner of ways the demands which society makes of its members pass beyond their capacity. Citizenship is demanded of men who were factory hands at twelve, motherhood of girls who were spinning at the looms in childhood, the replenishment of the race by men and women whose earnings are not sufficient to yield the decent things of life. Industry and application, a joy in work and a loyalty to tasks assigned are demanded of men and women too weary to care, too driven to do aught but obey. Thrift is demanded of men and women whose every saving is a

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denial of the very necessaries of life itself. A society which says "Thou shalt" is a society which should be able to say "Thou canst." A social order is therefore fundamentally unjust which makes no effort to proportion its demands to the capacities of its members. Such just proportioning may be accomplished either by the lessening of the social demand to meet the individual capacity, or by the increase of the individual capacity to meet the social demand. The fully matured society will pursue the latter course.

IV.

We come then to the essential difference between the older, eighteenth and nineteenth century conception of justice and the conception of justice which is increasingly gaining ground among us. The older justice suffered from an inadequate analysis of the human situation. Occupied in the main by the long prevalent restrictions of caste and class, it saw but the surface hindrances to human development. There must be no noble-born and base-born; every man must have the same essential right to life and liberty; every man must have a vote; politically every man must count for one and for no more than one; there must be power to protect all men against violence; property must be secure. So much accomplished, it was thought, men would go on freely to their own self-realization. It was on the one hand the ethics of comfortable landed gentry, on the other hand of idealists who had little knowledge of the more complex human situation. By neither were the possibilities of human interrelation adequately foreseen. In a simple community, such *laissez faire* as these genial-minded gentlemen propounded might disclose no serious difficulties; but in a more complex society such individualism of freedom was bound to meet its nemesis. Nor has the nemesis been simply material; it has as truly been spiritual. The economic and political individualism of the eighteenth and nineteenth centuries produced a type of character incapable, largely, of the fine power of participation in the wider life of its fellows. Such individualism

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reached its spiritual consummation in the typical eighteenth and nineteenth century Protestantism: each man was assiduous in seeking his salvation; with the result that the Protestant church, in its social outlook and effort, became in large measure a lamentable failure.

The new justice involves simply a subtler and more far-reaching analysis of the human situation. It involves a recognition of the wholly inescapable social interrelations. It is for this reason that the dominant interest of modern society is no longer in "free will" (note how in philosophy the problem has almost completely faded away), but in "co-operation." [6] So, in religion, I venture to say, where justice reaches its highest expression, the pre-eminent interest of the future will be no longer in an individual God and his individual relationship to individual destinies. It will be an interest in the indwelling "spirit of the group," the spirit of getting together and creating new opportunities rather than of accepting, each for himself, the "natural rights" assigned by a beneficent deity. What is significant about the older natural rights theory was that it assumed that God had given just so much of right to each man, and that that much was to be *protected.* The new theory of rights assumes that men together *create* their destinies, that rights grow as needs increase, and that these rights are not simply to be protected but to be nurtured and developed.

V.

And here, I take it, the peculiar task of the philosopher discloses itself. The problem of justice is essentially the problem of estimating the fundamental human needs and capacities. Such estimates can be made only through a thorough understanding of the nature and scope of the human person. What is significant about the sciences that

[6] Baker, R. S. "In short, during the last few years in America we have been developing with all our energy the highest art of all arts—the art of living together. I believe this to be 'the one idea more powerful than any other' that is shaping the events of our time." *The New Republic*, Vol. I, No. 5, p. 21.

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have occupied the fields of law, industry and politics is that they have had but a poor and restricted understanding of the human person. The American jurists who in recent years have argued with such lamentable lack of insight for freedom of contract, due process, etc., have been simply misled by their excessively individualistic psychology. The economists who, in the face of industrial stress and storm have clung to their theories of *laissez faire* and competition, of profits and interest, have been talking the language of a psychology individualistic and hedonistic. Attempting to organize a world of industry for human persons, they have known only a caricature of human personality. And finally the political scientists who, acquiescing in a larger individualism, have written their politics of nationalism in the conviction that group antagonism is the primal way of life, that preparation for offence is the best security for defence, have simply failed to note the larger movement of life toward co-operation. They have failed to note in short that life secures itself most effectively, most justly, by organizing its forces in friendly union, rather than by disorganizing its forces in suspicious antagonism.

To-day, in large measure, politics are stupid; industry is cruel; law is unjust; and in the main, I take it, because in politics, industry and law there has been as yet no adequate understanding of the function and larger scope of human personality.

Here then is the peculiar task of the philosopher of to-day. Equipped with the resources of a profounder psychological, sociological and ethical insight, it is possible for him—and I take it for him alone—to indicate the wider, co-operative possibilities of human nature. I have devoted much space in the foregoing pages to depicting certain needs of human personality that must be met through social action. There is one need that as yet I have mentioned only by the way, a need in which the philosopher however will be pre-eminently interested. It is the need for the development of a social type of consciousness, the

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type of consciousness which is eagerly, joyously participant in common interests and common possessions. The socialization of human resources, I take it, is to serve not only as a means of more effectively supplying the physical needs of men; it is to serve likewise for the development of a new type of character, the character that has its pride in the group, its joy in the common possessions and activity of the group, its loyalty to the welfare of the group. From of old philosophers have been interested in the "organic" self—the self in and of the life of its world. The lamentable failure of individualism in law, industry, politics and religion will give to the philosopher his long-deferred chance to develop his conception of the self that is truly organic with its world. This, I take it, is to be the philosopher's main contribution to the problem of justice, this, and in the light of it, the penetrating criticism of the categories basal to the social sciences. It is a contribution wholly fundamental in so far as the problem of justice is, as we have seen, nothing more nor less than the problem of understanding what human personality essentially requires and what it can contribute for its full development.

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PATRIOTISM AND HUMANITY.

F. MELIAN STAWELL.

WHAT is this patriotism in the name of which almost all the nations of Europe are now at each other's throats? It has caused, or helped to cause, this appalling tragedy, this welter of courage and fury, at once so horrible, so sublime, and so foolish. Over all the western world millions of men and women are ready to give their lives and all that privately they hold dear, each and all for their own country. At least it is not for lack of raw spiritual force that the world must undergo such unfathomable misery. This is some comfort in the darkness. Plainly there is enough heroism on the planet to make a heaven of it, could we only unite the wills of nations instead of each defying the other to the death. Why must they be at this defiance, nations that ought to lead the world in harmony? Why must the sweetness of self-sacrifice turn to the bitterness of murder? Is there any sinister necessity that must drive us to this?

There is a grim doctrine that answers, Yes, because it looks at each nation as in practice limited to its own interest. The sole duty with which the ordinary citizen need concern himself is the duty to his country; and for the sake of its growth in power and dominion he must be prepared not only to die himself but to take the lives of others. Something like this underlies the coarser conception of patriotism everywhere; "My country, right or wrong!" is a common cry; and in Germany throughout this generation such a doctrine has been taught. Yet the moment it is clearly stated the deeper mind of man rises up in revolt. Why, we ask, and we ask it in the very name of patriotism, should the nation be limited to the beggarly ideal of its own advantage? Is not the advantage of all men a much greater thing? And is not the real

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greatness of a nation bound up with its service to that? Now it is so hard for man to deny this, since after all man has reason and reason dwells with the universal, that even the war-patriots admit it. But they admit it perfunctorily and do their best to nullify it by assuming that the advantage of the whole is best served when each section forgets the whole and fights for itself. Perhaps what Europe is now suffering may bring home to the imagination of men something of the stupendous folly in this assumption. But how does it come to be made at all? Both through the good and the bad in man. An intense and narrow patriotism appeals to both: to man's insight and to his blindness, to his power of self-sacrifice and to the petty arrogance that makes the individual value only himself and those who immediately resemble him. "We, and we only, are the Chosen People"—that, in one form or another, has been the battle-cry of every nation bent on conquest. But the real value of patriotism goes back to the value of free self-development for all men in company with their fellows; to the conception that humanity must grow through the work, not of one individual or of few or of many, but of all, each with a unique value and therefore each with not only a right but a duty to work out his own contribution. Conflict of will may and does occur in the working-out, but such conflict cannot be of the essence, and indeed all who believe in any society at all believe at least in an approach to a peaceful solution, a solution that depends on the individual having sufficient fairness of mind to consider others beside himself.

It is comforting at the present time to remember that these fundamental ideas have been expressed with supreme power by Germans. It was a German, Kant, who laid down the rule that every man must be treated as an end in himself, never merely as a means. It was Kant again who formulated the majestic vision of a Kingdom of Ends, a harmony of free human spirits. It was a German, Goethe, who never wearied of insisting that "mankind could only be made by all men," just as the world was only made by

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all its powers together; that the endless gifts and glories lying latent in humanity must all be developed, "only not in one individual, but in many."[1] Goethe never denied that conflict and contradiction occur, but he always pointed to their solution in "the power of the spirit." He would call no man "right" who insisted that only he was right:

> "No man is right, unless he heal
> Strife in the strength of spirit, understand
> Others, though he should ne'er be understood."[2]

The same principles underlie the complicated problems of nationality. The value of a nation is bound up with the value of individuality; we value diversity among nations just because we see that individuals are, as a matter of natural fact, grouped into diverse types, and need, as a rule, for their development, to work with men and women of their own type. It is by his natural comrades, above all, that a man is made: it is with them first and foremost that he can make a true society. True nationality goes down as deep as friendship, or family affection, or any other elective affinity. A man cannot live to himself alone, and in his country he can share best in a greater life, a life best not only for himself but for thousands more, and, through them, of unique value for the world. The ordinary man of courage and patriotism does not of course put it to himself in this abstract way; he loves his country as he loves his mother, and fights for her from this instinctive feeling without further analysis. But behind the instinct lies, for its justification, this belief, and where the belief itself is justified it justifies a nation's birth and existence as a separate unity.

Always justified, we must admit, it cannot be: it may be better for the world, in certain extreme cases, that a national unity should not be made at all, or, when made, should be superseded. Few people can regret the failure of the Southern Confederacy in America to form an independent

[1] *Wilhelm Meister's Lehrjahre.* Bk. VIII, Cap. V.
[2] *Paläophron und Neoterpe,* 1, 198.

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polity, and, in any case, just as in Ireland at the present day, the party of union and the party of separation could not both be right. Something higher must be called in to decide between such rival convictions. The individual nation, just as the individual person, must be able to look beyond itself, and, if necessary, fulfil itself by sacrificing itself. But though the instinct towards national self-preservation, like every other instinct, is not infallible, it does, in the vast majority of instances, point true, so that there are few things in all the world oftener worth fighting for than a nation's life. We speak of the true nation, not to be confounded with the artificial empires held together merely by force. Such empires sin, themselves, against nationality. But some form of the genuine nation, the willing corporate life, appears vital to men's ideal, and so it comes about that the loyal citizen always sees his own country, so to speak, under the aureole of what it might be. But why should his vision end there? A foreign country has an aureole, too. Does anyone at bottom believe that one nation only, one type only, could exhaust the infinite varied possibilities of humanity? Or that freedom and independence are only good for a single class? If he does, there is no more to be said: his aim should be the absorption of all other States into his own. These States, no doubt, will resist, and war will never end. But the foolish poverty of such a belief is plain to all who reflect. It is as foolish as to think that one man could sum up all men. Even Treitschke, with his deification of the State, will assert emphatically, "All people, just like individual men, are one-sided, but in the very fullness of this one-sidedness the richness of the human race is seen. The rays of the divine light only appear in individual nations infinitely broken; each one exhibits a different picture and a different conception of the divinity." [3] Unfortunately, in theory and in practice, hold is lost again and again on this noble and far-reaching conception. Could we but keep to it, wars between nations would be at least as rare as civil wars.

[3] Selections from Treitschke's *Lectures on Politics*. Tr. A. L. Gowans, p. 10.

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This may seem a truism, but it is for want of insistence on this truism that the world is drenched with blood and horror.

It is well to teach citizenship and rouse patriotism, but we ought to repeat after every lesson the words of those great leaders whose love for their fatherland made them exult in another's love for his. "Il ne voulut pas qu'il fut sur la terre un homme sans patrie." Another's nationality ought to be as sacred to us as our own: an alien nation is mother to her citizens just as truly as ours can be to us. Why do we forget this? It is common sense and common humanity; but against it we have natural bias, defective education, and narrow statesmanship. Difference of race is a primitive barrier, and difference of tradition and outlook become barriers in their turn. The very passion with which a man's own ideal is followed obscures for him another's right to follow his, and this is as true for nations as it is for parties and creeds. National intolerance can be as bitter and unfair as ever religious intolerance has been, and it possesses, in addition, a peculiar vulgarity of its own. The self-laudation of a people is more grotesque, because more self-centered, than the fanaticism of any creed. There are excuses for it, no doubt: the initial task of raising the mass of citizens to the pitch of being willing to die for their country is not an easy one; faced with the apathy and the selfishness of the ordinary mortal, it is natural for the orator to foster any impulse that will help. How natural, and how dangerous, can be seen from the ordinary recruiting-speeches in war-time with their perpetual inference that the foreigner must be the devil and the nation the salt of the earth if the war is really a holy war.

But the progress of the world depends now on the nations advancing beyond all this. There is no other way; we have got to set up a counsel of perfection and aim at the impossible, if we are ever to escape. We must keep patriotism, and yet go beyond it, if we are to save what is best in patriotism itself, just as for the sake of religion,

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religious men had to go beyond their own willingness to die for their own faith. Toleration demanded not irreligion, but a better religion, and we might have a better patriotism if we could remember that we are also citizens of the world. But for this double end we need the rare spirit that will fight to the death against tyranny, and yet abjure all tyrannizing itself. The problem can only be solved so —never, while aggression lingers anywhere, by any simple Tolstoyan doctrine of non-resistance, as inadequate to the complexity of the facts as any simple Chauvinism could be. Tolstoyanism, no doubt, is only inadequate, and in Chauvinism the pressing danger lies. It may be the primary duty of every nation to defend its own interest, but certainly it is not its only duty, and yet we all act as though it were.

The best interests of our own countrymen, we may be right in believing, cannot run counter to the good of the whole, but their immediate and obvious interests can and often do, and when they do, they ought to be surrendered. That this may seem a hard saying only shows the vice of our international statesmanship. Nations have got to live together, and this they cannot do without some give-and-take, but most of us want only to take and never give. Germany has no right to Tsing-tau, we say in England, but what of our own right to Wei-hai-wei? No unprejudiced European could think of a Europe without a powerful France, a powerful Germany, a powerful England, except as a Europe crippled and mutilated, and yet through our absurd rivalries and selfishnesses we have reached a pass where thousands of us are striving for such an end. A patriot may do well to strive, other things being equal, for his nation's growth and gain in power. But infinitely much turns on that little pedantic phrase "*other things being equal*," and it is infinitely easy to overlook it. It would be absurd to deny that, other things being equal, national power may serve ideal ends: Englishmen, for example, were far more likely than Norwegians to gain good conditions for the Balkan peoples simply because England is far more powerful than Norway. But it is

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equally absurd to speak as though England had always used her power well.

Or take the desire for colonies: There may be a real spiritual gain to a people in experiencing the ties of a varied community, scattered over the world, and still conscious of a common tradition, a common language, a common ideal. This vivid sense of kinship in difference is a great thing for men to feel, and they seldom feel it outside the limits of political union, and the common work that political union involves. For nothing unites men like common work. It is the consciousness of this that makes so many German colonists try so hard to secure places where they may keep unbroken the old political ties. They have the vision of a new Germany, giving to and receiving from the old, more closely bound to it than any separate nationality could be. No one who understands this ideal could deny its worth. Humanitarians ought not to decry it as a sheer illusion, and one could wish that England had set herself more generously to help Germany towards its attainment, so far as it could have been attained without injury to others. The trouble is that a nation in pursuit of such a goal usually forgets all about injury to others, loses all sense of proportion, and thus really does fall under an illusion, and a most disastrous one, when it is ready to inflict the untold miseries of war simply to gain in territory and power. There were abundant proofs of such an illusion in modern Germany, and it was that, more than any other single factor, which checked any generosity that England might have felt.

The value of expansion itself has been, in general, enormously exaggerated of late years, and its drawbacks and temptations overlooked. The nation that takes up these huge straggling tasks and complicated responsibilities foregoes many advantages, moral and material, possessed by the simpler, less encumbered, life of the small compact states. But still the task has value, and our international system would be unhealthy if it could not make room for both types.

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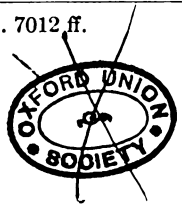
So with the training of the backward races: Many nations would do better to let this task alone, and yet there really is a valuable work to be done here, if it could be done in the true missionary spirit without humbug or domineering. Doubtless, only too often, the backward peoples are trained simply to be hewers of wood and drawers of water for the dominant race until the generous heart is ready to sicken at the talk of "the white man's burden," as nothing but so much tyrannical cant. For, as with individuals, so with nations, close to the genuine desire for a wider sphere of usefulness lies the unbridled lust of power for itself, regardless of any further end. The temptations that cluster around this desire are perhaps the deepest in man, and all the deeper because power itself is necessary to many of his finest activities. Certain it is that most people, at least in our active world of the West, desire power much more than they desire money or ease, in fact usually they only want money for the sake of power, or ease as a sign of it. Even where they do not desire mastery for their personal selves, they will desire it for the persons most like them, those with whom they naturally sympathize, their class, their party, their sex, their nation. And the temptation becomes the more insidious because it is in part unselfish.

Here is a fundamental cause of war, perhaps the most fundamental. Goethe, in his deep quiet way, saw this and showed it to us. He saw the dreadful vision of war rising again and again through the ages; the recurrent spectre that man must face on his way in the search for peace and beauty. It was the thirst for power that would not let the ghost be laid.

"How often has it risen! Yes, and it will rise
Ever and evermore! No man yields sovereignty
Unto his fellow: none will yield to him
Who won the power by force, and by force keeps his hold.
For man, who cannot rule his own unruly heart,
Is hot to rule his neighbor, bind him to his will." [4]

[4] Faust, Part II, Act 2, ll. 7012 ff.



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This aggressive passion, reinforcing and reinforced by mistaken ideas of duty and patriotism, will sweep everything before it, humanity, reason, self-interest, desire for comfort, love of life. Nothing, good or bad, arrests a people once there is roused in them both the instinct of self-sacrifice and the hope of dominion.

If it were only for wealth that men fought nowadays it would not be so hard to stop them. Norman Angell has shown convincingly that in war between civilized countries, countries with equal productive activities, the conqueror's gain in territory cannot be supposed to bring any gain in wealth. It is a great thing to have shown this; but, unfortunately, a gain in territory, though it may bring no gain in wealth, almost always brings a gain in power, at any rate for the time. The conqueror can dictate his will to a people who would have refused utterly to obey it before. Zabern has to listen to the Kaiser's men. What profit in this, we may ask, to the conqueror? Little or none to his soul, maybe, but much to his pride, and the student of history must face the fact that not only kings, but whole communities, can give themselves up to this thirst for domination. It is a tragic passion, because it is the excess, and therefore the degradation, of a fine one. Leadership becomes tyranny, and self-development ambition.

Almost every nation in Europe has gone wrong through this: "We have all sinned and come short of the glory of God." France and England to-day think that Germany is the greatest criminal in this respect, and perhaps just now she is, but it was not so long ago that an Englishman, Gladstone, could say of his countrymen, "The people of these islands are mad and drunk with aggression." That was shortly before the Boer war, and it is ill for us if we look back at that time now, and do not realize how the unchecked desire to get things done our own way blinded our people and made them consent to the monstrous wrong of killing brave men, because, rightly or wrongly, they would not yield to us on a point that seemed to threaten

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their own independence. With us, too, no doubt, the impulses of conquest and greed were mixed with far better ones, with a genuine belief that our opponents were themselves grasping and tyrannical, and that we ought not to allow such misgovernment to continue. But if we could have stood outside our own prejudices and laid aside the exaggeration of our own importance, should we ever have thought the Boer offences, serious as they were, enough to justify war?

It is this persistent over-estimation of ourselves that makes us all confuse our own selfishness with a divine task to civilize the world, and count ourselves, as Carlyle sixty years ago could say France counted herself, and as we reproach Germany for counting herself to-day, "a People whose bayonets are sacred, a kind of Messiah People, saving a blind world in its own despite, and earning for themselves a terrestrial and even celestial glory very considerable indeed."[5] And it all aids that pitiful shackling of imagination which cannot apprehend the waste and agony of war until too late. For once war has begun it is almost impossible for a nation honestly to examine its own case. It is too terrible for us to think that we are giving our best and bravest in an unjust cause. Hence, and not through mere hypocrisy and murderous spite, every nation at war tends to throw the whole blame for the horror on its opponents, and assert, in the face of everything, that it is acting purely on the defensive, and cannot be in any sense to blame. Left to itself, it will not yield one point of its case. This is the great and the overwhelming argument for arbitration. A neutral is far more likely to look at the quarrel fairly, and give at least a chance for the better spirit of each nation to re-assert itself. If we could remember that what is wanted is a just decision, and not merely our own triumph, we should all accept arbitration, at least as a preliminary measure. For it is only a worn-out superstition that can believe the just cause more likely to win by wager of battle than before an unprejudiced

[5] Latter-Day Pamphlets, No. 1 (written in 1850).

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court. Even now, there is no thinking mind in Europe that is not thankful for the existence of America, merely as a great neutral Power that can judge without self-interest, free from the hallucinations that are bred of the desperate struggle.

For in war we are surrounded not only by actual horrors, but by horrible phantoms. It is not true that all Germans or all Englishmen are callous monsters, each an embodiment of all that is worst in his nation; they are individuals infinitely varied, some cruel, some chivalrous, almost all convinced that they are suffering in a righteous cause. It would be laughable, if it were not piteous, to need to say this, and yet, obviously, it needs saying. And more needs saying. It is held on all sides that war between England and Germany was "inevitable," and this quite apart from the immediate occasion, the invasion of Belgium, a fact which in the writer's opinion left England with no choice between war and the breaking of her pledge. Apart from this, what was there to make war inevitable? There is nothing incompatible in our natures, our cultures, our fundamental ideals. We are the most alike of any two peoples in Europe, linked by a thousand ties of friendship, of marriage, of joint work in science, of common enthusiasms in literature and art. Even now, to many of us, this war is like a civil war. Nor was there any insuperable difficulty in the external conditions. The world is quite large enough for both of us, given a little reason on both sides. What then was the deciding cause? The aggressive spirit in Germany, men in England answer; the jealous greed of England, men in Germany retort. On either side we see nothing but the sins of the foe. Even in the fever that all this misery brings, cannot we both be honest? Cannot Englishmen admit that some of them did encourage greed? Have we so soon forgotten our talk of "painting the map red?" And cannot Germans admit that some of them did preach aggression? Why do we each set up a double unreality, an idealized perfect England opposed to an utterly damnable Germany, or an idealized perfect Ger-

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many opposed to an utterly damnable England? We are nothing, either of us, but two sets of fallible human beings, needing each other's forgiveness, longing at bottom for each other's good-will.

I write that last sentence deliberately, even in the tempest of hatred which is the worst part of war, because only by recalling our own deepest desires, the desires our whole heart approves, can we save ourselves or our nation from the tyranny of the meaner. Even in war the desire that our own people should win is not so deep, after all, as the desire that they should act rightly and be fair, but we grow blinded and what we lose sight of we forget. That is why it is worth repeating the platitudes of which some are so impatient, the old divine commonplaces about the brotherhood of man and the goal of all humanity. Incalculable harm has been done in Germany by a preaching that neglected these or defied them. Through that there was growing in her, it cannot be doubted (however we divide the blame and whatever sins we have been guilty of ourselves) a spirit ready to risk war, not for the sake of national existence, but for a mere increase in national power. It is only in such a spirit that a man could write complacently "the result of our next successful war must, if possible, be the acquisition of some colony."[6] Nothing could be further removed from reality than such *Real-politik*. For no man, of whatever nation, in any hour of reason, could believe the hideous suffering of war really justified by such an end. If he saw things as they are, he would as soon justify a candidate for assassinating his competitors—sooner, inasmuch as the war-misery is wider and deeper. But under the sway of a national thirst for empire a man does not see things as they are: he deludes himself with a vain-glorious and idolatrous worship of his own civilization; he dreams of it as something so universally superior to all others that its success more than atones for all the horrors on the way. He is scarcely saner than the hapless criminal in Dostoieffsky's *Crime and Punishment*,

[6] Treitschke. *Op. cit.*, p. 43.

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the youth who murders the grasping old pawnbroker just to show his Napoleonic gift for success in life. Patriotism, in short, once shut up to itself, turns diabolic. The Nation becomes a Moloch:

"The God of old time will act Satan new
If we keep him not straight at the higher God aimed."

This is the real tragedy of patriotism, and it can be felt in numberless utterances now, from all of us, but especially from the German leaders and publicists. Their patriotism, while it is the most fiery and convinced in Europe, has become the most fanatical and narrow. A single and relative duty has been exalted into something absolute and universal, and it is to this tragic blunder that we must ascribe much of the elements that have appalled us in their conduct of the war, the unscrupulous diplomacy, the cruel proclamations, the savage reprisals, the insensate hatred of England. That the kinsfolk of Goethe and Beethoven should be proud of hatred is one of the most grievous things in all this grief. An evil doctrine has obscured reason and humanity in a people essentially reasonable and humane, and nothing could show more clearly the harm that evil doctrine can do.

I would not, let me add, suggest for a moment that the whole German nation has taken up the ordeal of war through this spirit alone. But the spirit has been there, and the uncompromising expression of it, long before the war began, increased enormously the fear and defiance in the other nations. And upon that, as always, fear bred fear and defiance defiance. Alarm of Germany riveted the Triple Entente, and the Triple Entente alarmed Germany. She saw herself surrounded and shut in by possible enemies, and so things went on, acting and reacting, hurrying from bad to worse, until at last the strongest of the war-parties could precipitate war. Ambition alone did not make this war, nor fear alone, but the two together, mutual between the nations, woven inextricably. It may look hopeless, this net of our own weaving, but

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there is hope, after all, if we can only weaken the first threads, the impulses of dominance, whether of one nation over many, or of many over one. We shall never weaken them, whichever side succeeds, if we nurse the spirit of revenge. All revenge is aggression, and the history of Europe seems an unending Oresteia, the age-long tragedy of an ancestral curse, a blood-feud fed and fed again by the excess of the punishment taken for an undoubted wrong. It is only the Orestes who fights without hatred that can bring such ruin to an end. And if the task before Europe is harder even than his, we can only say that we must attempt it or be destroyed. The hell that an unthinking nationalism can make is now before us, and the one hope for the next generation is that the horror of it may so burn itself into our consciences and theirs as to be unforgettable.

And perhaps, when all is said, we magnify the difficulty. National feeling is tenacious, but nothing is more noteworthy than the ease with which some men and women, and those of the finest temper, can change their nation, adopt another country, and side with it even against the country of their birth. To-day there are Germans more English in sympathy than the English themselves, and English men and women on the side of Germany. So to train national feeling that it leaves room for internationalism ought to be no more impossible than to admit political parties in a state and yet avoid civil war.

But to that end we must remodel the ordinary patriotic teaching, as it shows itself everywhere, in popular education, in the daily press, in the works of the learned, in the acts of our statesmen. There should never be an appeal for duty to our own country apart from our duty to the foreigner. The statesman who was unfair to another nation should be denounced as a traitor to his own. Our sneers at other countries in peace or war, in the Old World or the New, our inveterate habits of dwelling complacently on our rivals' faults, ought to be recognized for what they are, the seeds of future wars. If a man has not width of imagination enough to sympathize with the alien let him

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pray for it, and until he wins it, let him hold his tongue. It is only sympathy that can balance national pride, and both are vital to the world. "The soul," said Whitman in one of his finest passages, "has that measureless pride which consists in never acknowledging any lessons or deductions but its own. But it has sympathy as measureless as its pride and the one balances the other, and neither can stretch too far, while it stretch in company with the other."[7] This, that is true of the soul, might be made to be true of the nation. It is idle to talk of it all as unreal and Utopian. The folly and unreality are with those who, in the name of freedom and self-development, send their own people in thousands to a needless and futile slaughter, who, under the banner of civilization, arrest or destroy every nobler work of man and waste heroism in cruelty.

If European culture is to be saved from this, it must be by a spirit that can get beyond the bound of an exclusive nationalism, and concern itself with the welfare of the States of Europe, equal and free, united in essence if not in definite form. This war cannot last for ever, and even in its torture, even though we see that, however it ends, it must leave indescribable bitterness behind it, let us prepare ourselves for the better things, the more real things, the things that make for reconciliation.

F. MELIAN STAWELL.

LONDON.

[7] Preface 1855 to first issue of *Leaves of Grass*.

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NON-RESISTANCE AND THE PRESENT WAR—A REPLY TO MR. RUSSELL.

RALPH BARTON PERRY.

MR. RUSSELL'S recent article on "The Ethics of War" [1] is characteristically high-minded and courageous. Admirable for its detachment, dispassionateness and humanity, it may well serve as a model for the philosophical discussion of those great issues of life and death that are now hanging in the balance. Since the article is distinguished by its dispassionateness, and since, I venture to say, that dispassionateness is its principal merit and justification, it is remarkable that the author should refer to it as an expression of his "feelings." Even had the article been no more than this I would nevertheless have read on, from interest in the author himself—having cheerfully resigned my first hope of learning something of "The Ethics of War." But in that case I should certainly not have dreamed of throwing my own feelings into the scales. As a matter of fact, however, Mr. Russell formulates *judgments*, which he supports by inference and appeal to experience. In questioning the truth of these judgments, I may therefore regard my feelings as no more relevant than they would be if I were questioning Mr. Russell's "Theory of Types." If what I say shall prove worth the saying it will be owing to the facts and truths that have argued for me.

Since I disagree with almost every specific opinion which this article contains, let me first express my agreement with Mr. Russell's *general* and underlying opinion that "the way of mercy is the way of happiness for all." This opinion is abundantly verified by human experience, past and present, and is rapidly coming to be a common

[1] INTERNATIONAL JOURNAL OF ETHICS, January, 1915.

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premise from which all philosophically-minded persons argue. War is an unmitigated calamity. It is not to be praised, but denounced; it is not even to be tolerated and idealized as a natural necessity, but is rather to be hunted to its sources and eradicated like a loathsome and destructive disease. Granting this, what is the reasonable attitude towards the present war and towards its principal actors? It is here that Mr. Russell seems to me to be mistaken in his facts and in his inferences.

There is in this country, and, I judge, to some extent in England, a disposition to take international treaties and conventions seriously, and to condemn as "lawless" a nation that violates them. Mr. Russell regards this disposition as groundless because treaties are in practice "only observed when it is convenient to do so."[2] They lack the sanction which enforces law, and serve only "to afford the sort of pretext which is considered respectable for engaging in war with another Power."[3] Now I am willing to assume for the sake of the argument the doubtful thesis that nations do in practice universally disregard treaties at the dictation of selfish expediency. There remains the important fact, conceded by Mr. Russell, that such action is judged to be disreputable and "unscrupulous." How is that judgment, which already impels governments to seek a "pretext," to be so strengthened as to act as a deterrent? The analogy of law, to which Mr. Russell appeals, would suggest a resort to force. But the enforcement of international law predicates an international organization resolved to substitute arbitration for war. How is such an international organization to be brought about? Only, it would appear, by the cultivation of opinion and habit. In short, before the present sentiment for the observance of international law shall be convertible into a sanction, it must be strengthened and attain to something like unanimity. To this end it is important that no breach of such conventions as are

[2] *Op. cit.*, p. 129.
[3] *Ibid.*, p. 128.

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already in existence should be condoned. It is not by a passive admission of past and present lawlessness, but by a counsel of perfection and a stern condemnation of the common fault, that usage is to be improved. A cynical violation of treaties should to-day be denounced with a severity exceeding any judgment in the past, so that to-morrow this thing may become so damnable that no government shall dare to be found guilty.

The disputes of private citizens are not settled, as Mr. Russell says, "by the force of the police," but by legal process resting on habit and intelligence. The police do not enforce law, but prevent its occasional infraction. The great majority of persons, and all persons for the greater part of their lives are "law-abiding."[4] If international law is to be similarly sanctioned, its observance must likewise rest on habit and intelligence. Nations must become "law-abiding," before any international police can undertake to constrain law-breaking nations. "If the facts were understood," says Mr. Russell, "wars amongst civilized nations would cease, owing to their inherent absurdity."[5] How is such a general understanding to be brought about, and how is the reasonable practice to become the normal practice? Only, it seems to me, by an unflagging effort to promote every instrument such as international law, treaties, courts of arbitration, that provide a substitute for the absurdity of war; and by the emphatic and unambiguous censure of every act that destroys these instrumentalities or renders them ineffective.

To many minds it doubtless seems paradoxical to war for the sake of peace. It is precisely as paradoxical, no more and no less, as it is to labor for the sake of rest, or

[4] Mr. Russell evidently agrees with the view of Mr. Strachey as quoted by Mr. Graham Wallas: "Why do men have recourse to a Court of Law in private quarrels . . . ? Because they are forced to do so and are allowed to use no other arbitrament." To this Mr. Wallas replies: "But, as a matter of historical fact, the irresistible force by which men are now compelled to resort to the law-courts in their private quarrels is the result of custom arising from thousands of free decisions to do so." (*The Great Society*, p. 169.)

[5] INTERNATIONAL JOURNAL OF ETHICS, Jan., 1915, p. 136.

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to make sacrifices in order that one may live more abundantly. Indeed I am inclined to go so far as to say that the one cause for which one may properly make war is the cause of peace. To be willing to fight for a thing simply means to be unwilling to give it up, however seriously it may be threatened. The one thing that is certainly worth the price of war is peace. This is simply because war means the destruction, and peace the security of all human values. The only justification of destruction is the hope of safety and preservation. This holds, whatever be one's values, provided only that they be human and earthly values. There is only one philosophy of non-resistance that can be justified, and that is other-worldliness. If no value attaches to the things of this world, then there is no motive for resistance; although in that case it is equally indifferent whether one resists or not, since the enemy's life is worth no more than one's own. The moment any human achievement of body, mind or character is taken to be good, then war of self-preservation is in principle justified. Even though humility be the supreme good, then one should resist the aggression of an enemy who threatens to destroy one's life before one has cultivated that virtue, or proposes after the extermination of the humble to spread a propaganda of pride.

But Mr. Russell bases his claims for non-resistance on no such philosophy of renunciation. It is evident that he holds life, happiness, intellectual contemplation, self-government, and many other things to be good. He suggests nothing better worth struggling for than these characteristic benefits of the secular civilized life. He would propose to secure these things by peaceful means, but he must of course add, "if possible." What, then if some enemy determines to destroy these things, and *begins* to destroy them? Suppose that enemy to be prompted by the motive of destruction. There are then only two alternatives: To yield, with the expectation that these good things will be destroyed, or to resist in the hope that they may be preserved, albeit at great cost and in

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diminished measure. In the former case one's action cannot be justified at all because one can expect no good from it. One cannot even hope to avoid evil, because it may be the determination of the enemy to perpetrate that which one holds to be evil. The latter course alone is then the only course that will be dictated by love of good. To try out this principle of non-resistance one must imagine the greatest conceivable good to be attacked with a deliberate intent to destroy it; or the greatest conceivable evil to be threatened with a deliberate and implacable intent to perpetrate it. One must suppose the success of the enemy to be probable if he is not resisted, and doubtful or capable of being retarded, if he is resisted. To test the principle rigorously one should conceive the good or evil at stake in such terms as to arouse one's deepest sentiments. It is life, or character, or social welfare, or the soul's salvation that is attacked; it is tyranny, or rape, or child-murder, or hell-fire that is threatened. What, then, shall one do? To yield, not to resist to the utmost, is to abandon the best or permit the worst. There is by definition no higher ground, either the promotion of good or the avoidance of evil, on which such a course may be justified. It is true that in any given case one's judgment may be in error. But this proves only that one should be sure that one's fears are well-grounded, that it is a genuine good or evil that is at stake, and that one's enemy is really one's enemy. This argues for the need of light. But it does not in the least argue against the principle of defensive warfare.

So much for the principle. Let us consider his applications. "The Duchy of Luxemburg, which was not in a position to offer resistance, has escaped the fate of the other regions occupied by hostile troops."[6] I am willing to waive

[6] *Op. cit.*, p. 139. Mr. Russell does not present evidence that this is the case. The New York *Times* for February 23, publishes the following extract from a letter written from Luxemburg: "I do not believe that the Belgians can hate the Germans as strongly as the people of this little duchy. Their country is not laid low by cannon fire, neither were they butchered by the Germans, and yet they are not better off than the inhabitants of Belgium. Every able-bodied citizen is being compelled to serve the German Army in one or other

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the doubtful considerations of "honor" and "prestige," and stake the argument altogether on other considerations. First, Luxemburg through non-resistance has decreased the respect for the independence of small powers in general, and for her own independence in particular. Secondly, though she may have escaped the fate of the other regions occupied by hostile troops *thus far*, it is as well to remember that the war is not yet over. If the tide turns, the inhabitants of this Duchy may yet be visited with all the horrors of war, with no friend on either side, and incapable of protecting themselves. Thirdly, if Germany wins, Luxemburg becomes, as she is virtually now, a German dependency. If Germany loses, Luxemburg has small claim for the recognition of her sovereignty even from those who are in this war the champions of the smaller states, on the principle that those deserve political autonomy who care enough for it to defend it. Finally Luxemburg does not in any case offer an analogy from which to argue for the non-resistance of Belgium or England, because she "was not in a position to offer resistance,"[7] and therefore was under no such recognized obligation to defend her neutrality as was the case of Belgium.

But Mr. Russell is evidently willing to contemplate, as preferable to warlike resistance, even loss of political independence. He evidently believes that what is valuable in national life may be preserved even though one put oneself utterly at the disposal of the enemy. Here again I prefer to waive the more doubtful matters. Whether humiliating submission to alien arrogance accompanied by a vivid memory of lost freedom, would be a tolerable form of existence, I will not attempt to argue—I should fear that I might lapse into an expression of feeling. Most men would, I think, prefer to die; and they would be entitled to the choice. But Mr. Russell proposes somehow to combine with non-resistance "English civilization, the

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form. . . . The laboring classes have lost their occupations, while the well-to-do cannot point to anything and say, 'This is mine.'"

[7] *Ibid.*, January, 1915, p. 139.

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English language, English manufactures,"[8] and English constitutionalism or democracy; all this, though the English navy were sunk and London occupied by the Prussians.

Now what can Mr. Russell mean? He knows better than I that not only manufactures, but bare existence in England depends on commerce. They depend not only on the actual freedom of the sea, but on the *guarantee* of that freedom. He knows that if the Prussians occupied London and it suited their purpose they could undertake the suppression of the English language as they have undertaken the suppression of the Polish language. He knows that should the German monarchy fear the effect of the example of English democracy, it would have a strong motive for emulating the policy of the "Holy Alliance" of 1815. Having the motive there is on the principle of non-resistance not the least reason why Germany should not accomplish these things. Mr. Russell thinks that England may nevertheless be saved from oppression by "public opinion in Germany," which is somehow suddenly to be inspired with magnanimity by the spectacle of the voluntary submission of its rival. Germany's treatment of a non-resistant China would afford small encouragement for this desperate hope, even were it not a general fact that arrogance is only inflated and encouraged by submission.[9] The last remaining vestige of hope would then be based on Mr. Russell's contention that England herself has not found it possible to refuse self-government to her colonies. But England has found it necessary or politic to concede self-government to her *colonies* because they were English colonies, composed of high-spirited men of English blood who could be counted upon sooner or later to assert their independence, and to make it respected if necessary by force. England has not found it necessary to grant self-government to conquered races. An England

[8] *Ibid.*, p. 139.

[9] History abounds in examples of this. Cf., e.g., the habitual insolence of the European races toward non-resistant or obsequious Jews.

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occupied by Prussians would not be a colony, but a conquered race. And by the express terms of a philosophy of non-resistance such an England would have lost its high spirit, and would have renounced forever any ultimate appeal to force.

Mr. Russell holds "that no single one of the combatants is justified in the present war." What he means is not perfectly clear. That no nation whatsoever has clean hands and an unblemished record is doubtless true. But at least two of the warring nations, Servia and Belgium, were wantonly attacked. It is now generally admitted that Austria's ultimatum to Servia was intended to provoke war in order that Servia might be "chastised." Belgium was deliberately sacrificed to Germany's military convenience. So far as these nations are concerned, there was no alternative to war save non-resistance. Both of these nations belong to the side of the Allies. The other allied nations were at least in part moved by a desire to save these two smaller nations from subjection. They may be said therefore to be fighting for the principle of national security, and for the principle of adjudicating international disputes by conference, agreement and treaty. They were or are now doubtless actuated by other and less commendable motives. But that does not in the least annul their justification on the first ground. For a man may rightly save a weak neighbor from assault, even though the assailant be one's private enemy, and even though his punishment afford one private satisfaction or advantage.

Even were one to grant that Russia and France should have permitted the subjection of Servia by Austria, and that England should have permitted the subjection of Belgium by Germany, there remains an independent and much less debatable question. Which of the warring parties is most deserving of censure, and whose victory is more desirable? In other words whom should one's moral judgment most severely condemn, and what outcome would be most conducive to the general good? This is a question which no lover of mankind, however detached and dis-

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passionate, can ignore. The present war is an event of prodigious human significance, and its consequences will be lasting and far-reaching. If there be any just decision or verdict in these matters, it is important to reach it, lest one lapse into helpless and confused passivity, and play no part now that the hour of trial has come. There is a widespread conviction among those who have observed the war at some distance from the heat of action, that Germany and Austria are chiefly culpable and that their defeat is desirable. It seems probable, more from what Mr. Russell has omitted to say than from what he has said, that he does not share that conviction. His independence and honesty of opinion are to be respected. But I believe his opinion to be mistaken.

Mr. Russell himself acknowledges that "democracy in the western nations would suffer from the victory of Germany."[10] He protests, however, that democracy can never be "imposed" on Germany; overlooking the fact that a decline of Prussian military prestige would not only remove a threat that seriously retards the natural growth of democracy in England and France, but might put new heart into the millions of German Social-democrats who (contrary to Mr. Russell's assertion) do not enjoy "the form of government which they desire."[11] Nothing that has developed during the last month of the war, and nothing that Mr. Russell has said, has tended to disprove the verdict that Germany and Austria are the principal offenders on whom may justly be visited whatever penalty be appropriate to the crime of war. The paramount fact is that one of these powers, abetted by the other, first made war. Germany, at least thus far, has practised war least humanely, has done least to mitigate its horrors, and has shown least respect for the conventions which have been intended to regulate and limit war. The dominant party in Germany, the Prussian military class, most perfectly embodies the aggrandizing and arrogant

[10] *Ibid.*, p. 137.
[11] *Ibid.*, p. 138.

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spirit of aggressive war, and constitutes the greatest obstacle in the way of the achievement of future and perpetual peace. If these judgments be well founded it is essential that they should be made and that they should not readily be forgotten. They may only too easily be confused by an over-scrupulous regard for the guilt of the less guilty. There is a curious inversion of emphasis in Mr. Russell's article. It is not impossible that a distrust of vulgar opinion should lead a nicely analytical and cautiously reflective mind to exaggerate whatever is contrary to the general prejudice. It may even lead one to dwell at length upon the immoderate indignation of the victim, while the fury of the assailant rages unrebuked. It is doubtless the principal task of the philosopher to offset the bias of the multitude and resist the current that sweeps by him. But it sometimes happens that the common opinion is correct, and that even such blind passions as patriotism and righteous indignation will be found working for the general good.

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THE MORAL EFFECTS OF WAR AND PEACE.

C. DELISLE BURNS.

THE statement that peace weakens a nation is only made by those who have too little to do. And yet a popular acceptance of this creed of the clubs has done much to bring on the present war. There is at least a sneaking suspicion that manhood is tested by warfare, and it is said that in Germany even learned professors have supported the superstition.

I do not in the least deny that war may be an occasion for moral development, or that virtues may appear in war which do not appear in peace; but so may disease be an occasion for virtues which cannot appear when one is in health. It would not follow that disease was in any sense more valuable morally than health unless the *total results* of disease were morally preferable to the total results of health. And since we may now have evidence as to the moral effect of war, it is time to consider what may be the moral effects of peace.

First, then, I shall attempt to show that peace does not weaken the civilized man; and next I shall cast doubt upon the too prevalent superstition that manhood is tested by warfare.

1. *Interests Excited:* (1) Diversity among men in the same nation:

A man is weakened by the disuse of some of his muscles, or, in the higher sense, by the "balking" of his dispositions and the suppression of his mental energies. But energies, dispositions or muscles are called into action by interests. The psychologists say that attention is of vital importance, for where the attention is attracted an interest will arise and action will follow. Different objects will attract different men. The attention of a savage is attracted by a string of beads, but a book of verse will leave him cold and

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therefore inactive. The savage will attend if you hit him on the head but not if you speak of quaternions; he will work for a meal but not for a Rembrandt. It follows that objects which will excite one man to action will leave another inactive and, therefore, weaken him. There will be nothing in such objects for him to exercise his muscles or his disposition or his energies upon, for there will be nothing in them which excites his interest or holds his attention. Any man whose interest is not excited tends to moral decadence since his faculties sleep; and if his interest is excited only by a few interests his moral character will probably be, in proportion, undeveloped.

Now peace is a situation in which the objects of interests and the purposes of action are many and various, but they are somewhat subtle. The blind man may treat color as nonexistent and the fool may refuse to believe that anything is worth working for which he cannot see from his narrow windows. He is inactive because he is not excited to action; he is weakened because he can see nothing to do. So that there may be opportunities for moral development which cannot be used because they are not perceived. A nation which "rots" in time of peace is thereby proved to be uncivilized; and I am not denying that nations do decay. I accept the fact thus stated by historians, although I think it may be disputed. But it does not follow that civilized life is the cause of national decay. It is with a group of men as it is with each singly. If you place a muscular savage in a chemical laboratory, his muscles will be atrophied and he himself will perhaps become degraded and vicious. But surely that is not due to the degrading influence of chemistry, for if you place a trained student there he will seize the opportunity to develop perhaps unsuspected abilities.

So also a group of men who are all eyes at a football match will yawn before a Velasquez; and if you give them too much Velasquez and no football the whole group will decay. A nation decays for like reasons. No nation is homogeneous and the few who are interested in science

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and art, and are therefore active in such pursuits, are surrounded by masses for whom the objects of art do not exist and the uses of science are trivial. I do not complain of such facts. It may be that civilization and the employments of peace will never really affect the majority in any nation, or that the cultured but brainless among the "upper" classes will never be excited by any but the crudest interests. Peace cannot make a savage or an ape into a civilized human being. It is after all only an opportunity for employment in more varied or subtle tasks than the search for food and clothing; and if such opportunities cannot be used by a nation then the nation will decay. From such weakening and its consequent decay war may indeed save a people as yet at the savage stage in development, as it may save the colonel who sleeps all day in peace at his club. The muscular savage is saved from degradation by being taken out of the chemical laboratory and sent to collect scalps; and I do not deny that collecting scalps may give him a better chance of developing his ability than smashing test-tubes. Thus opportunities being neglected does not prove anything against the situation, but may be evidence against those who do not use it.

(2) To show, however, that peace is an opportunity for development it is necessary to decide whether it has been so used.

Now there are men whose interests are not confined to the collecting of scalps, who may be more excited by a chemical experiment than by a football-match, and whose muscles may indeed be weakened in proportion as their brain is exercised. In many nations these are to be found existing in the environment of the more primitive type.

The opportunities offered by peace are used by them in the increase of mastery over natural forces and in the development of their own and their neighbor's knowledge of the universe or of man. They "energise freely" in situations which only create somnolence among the primitive. They see and feel objects unknown to the observer of football or the taster of cocktails.

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Such men may be called "weaklings," or "mugwumps"; and I do not by any means say that they are better than the muscular savage. All that is really in question here is whether they are any worse, or whether a nation of scientists is in any sense "decadent" as compared with a group of savages. But it follows from what I have said above that, since no nation is homogeneous, the uncivilized in any group may be "decadent" when the civilized are developing, and it does *not* follow that because the savage would be decadent in a laboratory the civilized man would be in the same state. The barbarous appellation of "weaklings" as applied to intelligent men is a confession of ignorance: it implies that the "robust" do not understand how much energy it takes to do intellectual work. So to a man born blind it may be difficult to explain why anyone should paint pictures, for it is work in a region which is not marked upon his map and is therefore treated as non-existent. Peace, however, cannot be altogether an opportunity for decay if there are some in the nation who use it for development; and if these few are increasing in number, peace will be positively useful morally to more. It will be held by many, however, that there is something "unnatural" in the intelligent and unwarlike man, as of a creature all brain and no muscle. It will be asked whether the rest of our activities should be sacrificed to brain-process; and it will be implied that the result of civilized or peaceful interests is permanent dyspepsia and priggishness. Especially perhaps in England there is a feeling that intellectual interests are somewhat uncanny and often improper. Appalling results are anticipated when more men are able to think as only the few do now. We hear of a "heartless" civilization. But this is the attitude of the gorilla who cannot understand how different the situation will be when there are more men in existence. The gorilla thinks that a world without him would be decadent.

For this reason it is sometimes necessary to say—what should be perfectly obvious—that a man who is not muscular may not be *unhealthy*. Many inhabitants of labora-

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tories may sacrifice their health, but in that far they will be bad chemists. Health is just as essential, I think, perhaps more essential, to the pursuits of peace than to those of war. And as for the *results* of peace, will anyone say that peace produces more disease than war? But in the words "weakling" and "brainy" there is implied some physical deficiency of health or bodily well-being. The lack of muscular development if the brain is used we all admit, but why should we deplore it? Surely it is only bad if it implies ill health or disease. Probably in spite of the endless wars of history the present Germans are less muscular than their ancestors who ran about in woods; but if they are healthy they are no worse. Yet Prince von Bülow calculates "health" solely by reference to "fitness for military service," [1]—a crude criterion.

It must be agreed then that if peace necessarily increases ill health it is an agency for decay; but it does not. And if it produces less muscular development because of other developments, then it is not an agency for decay; for the other developments are at least as valuable morally as is the development of muscle.

2. *Activity in War:* The value of peace for development, or at least as an opportunity for *resisting* decay, can be seen further by referring to the results of war. I shall put aside for the present the possibility of using an evil as an opportunity for good. I shall not refer yet to the sense of patriotism and the unselfishness which seem to come in times of war. All these may be valuable morally, but there is the more fundamental or simple effect of war upon the energy and activity of a nation. It is said that war at least keeps the nation active.

Let us turn then to this effect of war upon a nation and let us put aside the fact that great numbers are killed; for those at least do not share in the supposed benefit to the national "strength." The rest, I suppose, are prevented from decadence by the stern employments of war. We are

[1] *Imperial Germany*, p. 215, where statistics as to "health" are taken from a list of those capable of military service.

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told that "slackers" and "mugwumps" and "weaklings" are reduced in numbers and the "nation" is kept from decadence. In fact the vast majority of interests cease, and one interest or a few employ all the nation; but is not *this* decadence? And even though the whole body of the nation are giving to the actual fighting an attention which could never be excited even by the most important foot-ball match, the vast majority are looking on and their own labor, even in the making of shirts for the wounded, is lessened by the amount of energy spent in futile discussion or vapid expectation of news. But is not this what creates "slackers" and "weaklings"?

Next, very different men, with very different abilities, employed in peace in varied production, are in wartime all assimilated as "soldiers." But this surely is decadence for the nation, in so far as it is a set-back to the development of all who might do something else much better than they can do soldiering. Let us imagine a situation in which not only artists and scientists but salesmen and cobblers and journalists had all to give up their special knowledge and skill in varied pursuits in order to bake bread: the result would be bad for the nation as a whole not because the greater number would be bad bakers but because of the loss of ability for other purposes. In war-time the more soldiers the better, and even a bad soldier may be more useful than a good scholar; but war is bad for the man who has ability for other things and can only be a soldier. War restricts opportunity for individual development, and therefore atrophies half of the activities of the nation. War is in that sense a direct cause of national decadence. So far from increasing the activity, it really reduces the number and variety of the energies exerted in peace. It destroys specialization and in that way limits the opportunities of individual development; but a nation is more highly developed in proportion to the number and variety of its citizens, and a perfectly homogeneous crowd is less civilized than a company of diverse characters. I shall not refer to the long periods of inaction which the soldier

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has to endure, for I think that even if every soldier were active continuously the fact that there is less individuality in war shows the danger to moral development.

3. *Manhood in War:* It may be said, however, that this similarity of action which is forced on men who are capable of very diverse energies is useful for the sake of "manhood" or "manliness." The specialist, artist or poet, is after all a man and war makes him "more of a man." But is "manhood" more tested and therefore more developed by war than by peace?

In the first place it is well to note that even if courage and endurance are indeed promoted by warfare that would not prove war morally more useful than peace. It may be admitted that disease tests endurance, and to be operated upon may test one's courage; but no one suggests the spread of disease for moral results or the increase of surgical operations. It is good to "make the best of a bad job"; but that does not show that the "bad job" should be created in order that we may make the best of it. Thus in spite of the "endurance" and "manliness" developed by disease it is generally admitted that health is a better occasion even for "endurance"; or at least that the total effects of health are morally better.

Man does indeed progress by overcoming difficulties, but there are quite enough difficulties not of our own making for us to exercise our endurance or courage upon. It was a false system of education that created obstacles in order to train the child; for it wasted valuable years in artificial efforts which might have been spent in gathering strength for the only too great difficulties of real life. It would follow that, although so long as war exists we may find in it opportunity for courage, there will be no lack of opportunity even if war should cease; just as while children were tortured with Greek paradigms, they might have found in them an opportunity for training their memories; but there is much to remember even though we are not asked to learn lists of irregular verbs. Thus also so long

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as a man has typhoid he may practice endurance, but there will be other opportunities even if he is cured.

So much negatively—but positively I am not so sure that war does give more opportunity for courage and endurance than does peace. Again I seem to feel the distinction between different kinds of men. Some, I admit, find opportunity for courage only in the danger of death or maiming; and all would need some courage to face such dangers. But with a more subtle mind one may discover other opportunities for endurance or courage.

Duelling was practiced in England less than a hundred years ago, and it required a sort of courage to stand up before another man with a loaded pistol. In German Universities courage is maintained by private combats with swords which slash or maim. It needed some courage to be a gladiator in ancient Rome; and, I suppose, every man could practice in his bed-room a sort of courage by holding his finger in a candle-flame.

Now peace provides admirable opportunities for such courage—indeed many more than does war. The risks one may take in peace are very great indeed. Suppose, for example, every adult male were made to balance himself upon the cross on the dome of St. Paul's. The nation would doubtless progress in endurance and courage at the cost of perhaps fifty per cent killed or wounded; and it would be a test less expensive to carry out than warfare is. A thousand other tests could be devised in time of peace and thus this particular kind of courage would not be allowed to die out. But the point is that we have managed as a race to do without certain opportunities for courage. Savages have very frequent occasions for such virtue; life is less dangerous now; but is it, on the whole, less valuable morally?

If we are to progress at all some opportunities for the display of courage must disappear. Few regret that it is impossible now to burn heretics and all, I think, are willing to give up a practice which for other reasons was bad although it gave the heretic opportunity for a particular

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kind of courage and endurance. The courage of the gladiator has disappeared, and are we therefore decadent? Suppose then that warfare were to cease, not absolutely and in the millennium, but now and just for a time; we should then sacrifice the opportunity for that particular type of courage and endurance which is provided by battles. But should we be any the worse? Would our "manhood" have less opportunity to show itself? It seems that our loss of opportunity for display of one kind of endurance would involve an immense gain in opportunities for the display of other kinds of endurance and innumerable other virtues. There would be, of course, many who would be unable to use such opportunities either through ignorance or intellectual incompetence; but we might well sacrifice the development of the peculiar virtues of these men to the development of the varied virtues of the majority; for where there is one man who can only develop in war there are a thousand who can develop more fully in peace. And I am speaking now not of a purely intellectual development but of all that separates real "manhood" from beastliness. The opportunities for the full development of all that makes a man—courage, endurance, perseverance, high enterprise and honesty as well as benevolence and chivalry—are to be found much more in peace than in war.

Blind fools see only the gallantry of troops marching to drum and fife; they cannot see the endurance of the undecorated and uncheered multitude who tramp daily to inglorious labor for their wives and children down to the factory and home again. No trumpet sounds the praise of these, whose dumb endurance for generations has built the nation. No one says we are proud of them. They are not thanked by King or Parliament, and the newspapers do not publish the names of the dead and maimed.

4. *Unselfishness:* Finally, it is said that war is morally valuable because of the increase of patriotism and unselfishness. Thus the many private interests of a commercial peace are subordinated to the public welfare: men and

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women think first of what they must do for others. The wounds of soldiers, the poverty and disease of the nation are at last cared for; and money is spent upon other things than private needs or private enjoyment.

It is indeed a complete condemnation of the industrial and commercialized peace which has existed to say that the vast majority have had no interest in their fellowmen. War is indeed useful morally if it can at least excite even a transient unselfishness. It is well that men should feel at least for a moment their debt to the State, to the poor and the diseased, to the nation which has made even their pleasures possible. And it is not simply the rich who are benefited morally by the discovery that life is not all "beer and skittles"; even the poor may gain morally by the sense of solidarity which a common danger gives. So that the chasm, the suspicion and misunderstanding which separates the few from the many in a commercialized peace may, even for a few months, be closed. All this is moral gain from war. But let us not therefore praise war, for peace, too, has its opportunities for unselfishness and patriotism. That these opportunities have not been used by rich or by poor, by fool or by scholar, is a condemnation, not of peace but of the primitive attitude of mind, the savage and uncivilized atmosphere, which commerce has created and a false education has maintained.

In England now the ladies are making shirts for the soldiers; but the men were without shirts before they enlisted. If the new activity is really unselfish and not simply the eagerness of selfish and incompetent sentimentalists who want to make the poor die happily in defence of the possessions of the rich, if it is not the mere egotism of a clique and is really patriotism—why for generations have the poor been uncared for? Why has anyone who thinks of more than getting an income and enjoying it been regarded as a wonderful exception or a laughable "freak"? Is it because of the moral ineffectiveness of peace or because of the lack of intelligence which cannot feel for a fellowman until one's own happiness is obstructed? On

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a ship in a storm the passengers have often become friendly who before were hostile and divided: so difficult is it for men to see a common interest when their own interest is not obviously in danger.

So long as men need war to make them feel their common interests, so long will the good effects following from the evil of war give an excuse for many to praise war. But is there no other and better way of exciting patriotism and unselfishness? Not, I think, among the unthinking or among the savage and uncivilized; not certainly among the machines which men have become in the industrial system. It is with a sense of relief and of high adventure that many a mechanical clerk or laborer has enlisted now: at least now he feels that he is doing something more and worthier than drudging for his private income and enjoyment. But that is because he was not able to see the value of his work in peace for unselfish and patriotic ends; or because no one suggested such motives as a reason for keeping accounts or digging coal. That so great an evil as war should be the only occasion upon which we hear anything of unselfishness as an element in action, condemns—not peace, but the lack of moral perception and moral character which has been condoned during years of "laissez-faire." No one is now ashamed of saying that men should die for their country; but everyone in times of peace has been afraid of saying that men should live for their country. And if we are not careful the ultimate result of this war will be, not a continuance of that momentary unselfishness which danger has excited, but a return to the old egoism and the old class war. When the storm is over the passengers in the ship of state will begin again their carping criticism, their slander, their mutual hostility and their primitive selfishness. The ladies will cease making shirts for the needy and the gentlemen, no longer under arms, will see no further duty to their country except the shooting of partridges or the sleeping in clubs. Then once again we shall hear of the moral benefits of war from those who can find nothing to do, so long as pain or distress does not touch them.

C. Delisle Burns.

London.

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THE WOMAN MOVEMENT AND THE LARGER SOCIAL SITUATION.

JESSIE TAFT.

WOMEN find themselves as a matter of hard fact in the equivocal position of being neither one thing nor the other, neither in the home nor out of it, neither wholly mediæval nor wholly modern. The world to which women have been accustomed for centuries and to whose patterns their minds have been shaped is not for the most part the world of the modern man. His world is not only different, it is even hostile and antagonistic in many respects to the world of the woman; so much so that women who attempt to conform to both worlds, as many are compelled to do, find themselves face to face with conflicts so serious and apparently irreconcilable that satisfactory adjustment is often quite impossible on the part of the individual woman. The world outside the home has proved itself so ill-suited to women and children, even to the extent of being positively injurious, and the home in its present form has seemed to be so little adapted to the larger world's ideals of trained motherhood, scientific domestic economy, and socialized ethics, that the problems arising from the clashing of the two spheres have grown into great social questions to be handled by society as a whole.

An unprejudiced examination of the actual conditions which the average middle class woman has to meet in adjusting her life to the home and to the man's world gives sufficient evidence of the reality of the problems which are back of the so-called "woman question" and reveals their intimate connection with every other great social movement of our day. The cry of the uneasy woman is not merely the reprehensible expression of her own personal restlessness. Consciously or unconsciously it voices her

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share in the protest of the age against the impossible situation in which humanity finds itself today, and her struggles, even though they seem to be but a vain beating against the righteous and inevitable order of things, are a real part of that larger conflict which society as a whole is waging in its effort to combine modern industry and modern individualism.

I.

It is not necessary to review in detail the problems which justify the woman movement. They fall under the two aspects of personal difficulties which the individual woman must face in shaping her own life, and public questions which threaten the welfare of society. Those of the first class are very real to the young woman and the young woman's parents. Shall she prepare for marriage—or for wage-earning, for neither or for both? In view of the contingencies of non-marriage or widowhood, if for no other reasons, self-support and preparation for it appears to be part of prudence and good judgment. But having entered upon training for work in the world rather than for home-making, the desire of a normal woman for a husband, children, and a home inevitably clashes with other desires developed in connection with her work in the world or in her preparation for such work. Economic freedom, regular hours, specialized, standardized work, the dignity of a trade or profession, resist the heterogeneous, unsystematized tasks, the infinite detail of housekeeping.

Ethical conflicts between the standards of the sexes are another aspect of the practical problem. A standard of absolute physical chastity for the woman is confronted by a world where almost unlimited license is taken for granted. This fact, reinforced by the ordinary training of the home to the effect that sex, especially in all its physical manifestations, is inherently and mysteriously evil and is allowable only when the evil is counteracted by the charm of the marriage ceremony, that the flesh and the devil are one, may lead the woman to revolt in disgust against sex

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in general to such an extent that the natural impulse to marry is actually checked by her intense horror of the physical relationship involved and by her belief that all men are brutes in so far as they seek sex satisfaction.[1] The antagonism between her bringing up in the home and the world of sex as she finds it beyond the home, makes for every thinking woman a problem that may last over years of her life—the task of building up an idea of sex that is consistent with the facts and yet leaves a universe in which she can live comfortably, of escaping from her own barren chastity while avoiding the man's meaningless license, of creating a new appreciation and expression of the most fundamental human instinct.

From the standpoint of society as a whole the same problems emerge which disturb the individual woman. Women are the consumers, but they are untrained and society is carrying the burden of their ignorance of food, clothing, sanitation, and hygiene. Women in occupations, unskilled and unorganized, render labor problems more acute. On the other hand, the invasion of women into the regions beyond the home has very naturally forced into prominence the interests for which women stand and has brought into sharp relief the incompatibility of business for money only and municipal government for politicians, with the ends which women hold essential—the welfare of children and the health and happiness of human beings. Prostitution offers yet another aspect of the dualism between the older ideas and the newer conditions. Defectives furnish a large number of the victims but the presence of such a number of defectives in the population is itself evidence of lack of social knowledge and control. The conditions under which women work, the barbarous state of domestic service, unsanitary surroundings, low wages, postponement of marriage are contributing agencies. Another agency which none the less brings out the interaction between the home side and the changed social conditions, is the tendency of the unmarried woman to turn to other women, to

[1] Havelock Ellis, *Sex in Relation to Society*, II, p. 77.

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build up with them a real home, finding in them the sympathy and understanding, the bond of similar standards and values, as well as the same æsthetic and intellectual interests, that are often difficult of realization in a husband, especially here in America, where business so frequently crowds out culture. One has only to know professional women, teachers, social workers, doctors, nurses, and librarians to realize how common and how satisfactory is this substitute for marriage. They have worked out a partial solution to their problem in that they have contrived to combine a real home based on love and community of interests with work in the world, but they have solved it at the expense of men and children.[2]

What is the root of the conflicts—and I have noted but a few of the more obvious—which perplex the individual woman, challenge the social reformer, and furnish conspicuous motives to drama, fiction and essay? The simplest solution is that of a well-known tradition of psychology, recently presented as an induction by Heymans: Woman is emotional; hence is inferior in science, reasoning, and every kind of theory—in art also, for she is too narrowly personal. Women excel only in morality and in the use of intuition, and their activities should be limited to the home, the church, the sickbed, and practical philanthropy. But modern psychology is not content with such blanket terms as emotional; even if women are emotional, it asks "Why?" For emotion is not according to present analysis a water-tight compartment of the mind. Nor is it to be either valued or depreciated apart from its connection with the whole process of life and thought. The great man is not the man of no emotion but the man in whom emotion sensitizes and kindles intellect, or stirs to great achievement in action. Emotion appears in any field when there is an obstructed interest, and when it functions properly, far from being a hindrance, it is a stimulus to the analyzing and abstracting that follow. The charge that fairly might be made is that women have

[2] Edward Carpenter, *The Intermediate Sex*.

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failed to develop the reflective process and that emotion with them seems too often to be just emotion which does not lead to any rationalized expression. Certain ends are emotionally evaluated and the thought of them as already obtained is set up in a vague abstract way as something highly desirable and something which may come to pass somewhere, somehow, but there is no actual attempt to work out concrete means for obtaining the ends in question. With men, on the contrary, the emotion is much more frequently counterbalanced by the attempt to do something. The rational part of the process is given its innings. The whole matter might be put this way: Emotion appears to be functioning more normally in men than in women. The history of women offers reason enough for this condition so that there is no need to assume an inherent abnormality in women with regard to the ordinary course of mental process.

Four solutions of the problem by women themselves have at least the merit of still farther bringing out the dual factors of home and work in the world.

Olive Schreiner emphasizes the importance of useful labor for health, life, and individual development. The traditional field of woman's labor has contracted; compensation must be found in other socially useful labor or woman degenerates and becomes unfit even for matrimony. Miss Tarbell finds the root of the trouble in the fact that women have become consumers instead of producers and have not realized the new task involved. Having failed to see or develop their own field, they have gone over to the men's and find it impossible to combine men's work successfully with their feminine temperaments and maternal functions. But personal ambition and the joys of individual freedom and independence have too often overcome their sense of duty to the nation and they have not infrequently decided for the men's field against marriage and motherhood. Mrs. Gilman and Ellen Key are at one on the necessity of economic independence at all times; they coincide in regarding the child as the supreme end of all social activi-

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ties; but they differ fundamentally in what they regard as the essential relation of effective maternity to the occupations of the mother and in their general attitude towards the meaning of sex for life. Mrs. Gilman tends to minimize sex, to limit it to the bare field of reproduction, and to leave all the rest of life to that which is common, social, higher than sex. She also maintains that if domestic work is to be put on a modern business basis, the system which allows each woman to manage all the various forms of it for her own individual household will have to be replaced by co-operation and specialization. Ellen Key insists on the final worth and importance of sex in its highly developed forms and on the necessity of maintaining sex distinction. While she still believes that the mother should retain economic independence through the state, she also thinks that the greatest opportunity for a woman to develop all the possibilities of her personality, especially those qualities which are peculiarly hers, lies in her work within the home; that if she is to function most effectively she must not try to combine any profession or outside occupation with motherhood.

Every position here noted indicates a conviction either of a lack in woman's personality or a lack of harmony between the nature of woman and the modern world, which is unfavorable to the development of her personality. Mr. Heymans unintentionally tries to prove that the woman is quite unfit for any share in a civilization that has reached the stage of reflective consciousness. Miss Tarbell emphasizes the difference between the greater unity and restfulness of the personality of the woman of the past as compared with the uneasy split-up consciousness of the modern woman. Both Miss Tarbell and Ellen Key point out the tendency of the world outside the home to crush the essential womanliness of the woman, yet admit a certain amount of sacrifice of personal development as necessary to the woman in the home. Ellen Key recognizes this so keenly that she advocates minimizing the sacrifice by such means as the vote, economic independence through mother-

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hood pensions and work at the end of the child-bearing period. Mrs. Gilman lays greatest stress on the individualistic narrowness of the woman who is confined to the isolated home life and the bad effects on society of the unscientific methods of feeding, clothing, training a family and keeping a house clean under the régime of the woman who is not on a par with modern society intellectually, while Olive Schreiner gives a general picture of the dwarfing of the woman's personality in terms of her diminishing usefulness as a worker.

II.

The case is not different with the modern man. The woman has no monopoly on conflict and disharmony. He, too, is swamped by the system in which he finds himself. He, too, is being made, willy-nilly, by the relations in which modern business and industry are involving him; yet he is not expressing himself consciously through these relations. One has only to recall the struggle between capital and labor, the way in which life with its ideal interests is being crowded out by the pressure of the economic machinery not only on the laborer but on the man who is chained down to money-making, the frequent incompatibility of home and family with the work for which the man is fitted by nature, the alienation of the father from his home responsibilities through lack of leisure, to realize that the unsatisfactory character of the woman's life is but a conspicuous part of a wider and more basic situation which involves men as well.

Industry and trade, as carried on in the Middle Ages within a single family, a small community, or even in the craft and merchant guilds of the larger towns, was a social institution controlled to a large extent from within by natural social impulses. A man had no business relations which did not involve relations of an immediate personal character. He was in direct contact with the people for whom he worked or who worked for him and he had a self, a personality, formed by these relationships and adequate to them.

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Modern business and finance, on the other hand, has become so complex, so impersonal and abstract in its organization that it seems to involve only economic values. In form it is purely economic, in content it is still as social as ever it was in the Middle Ages. The changes that have brought all this about have been so tremendous and so sudden, the introduction of machinery and the consequent centralization and systematization of industry have so depersonalized it that the human beings involved in it have not yet had time to develop personalities that are equal to the complexity of the system.

The world to-day is confronted by this kind of a problem: Men are being forced to act under enormously widened social conditions in which their relationships to their fellows have multiplied increasingly while becoming correspondingly difficult to perceive as social, because of the growing abstractness of the business medium. Yet they bring to this enlarged social activity only the selves that are formed on the feudal pattern—neighborhood, family selves too narrow to respond socially beyond a limited and obviously social circle. In the narrower personal connections, natural conflict of egoistic and social impulses furnish a rough control; in the new and unrecognized social relations there is nothing to call up social tendencies. Egoistic motives easily predominate. A man who would as soon lose his own life as injure a child he knew personally, can, without ever being conscious of the fact, injure hundreds of children and indirectly an entire community by feeling no responsibility for their employment in his factory through his superintendents. The man in the world of business, therefore, is not constituted a self, a person, a moral and social agent, by the individuals at the other end of the system. He does not make their motives and attitudes a part of his consciousness, thus bringing all the elements of the situation within his grasp. He uses his connections with people for his own benefit while remaining oblivious to their social character. The maxim for this procedure is "business is business." The results are social

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as well as economic, but only the economic factor is recognized and consciously intended. Hence we have these unlooked for social elements actually altering our civilization but absolutely uncontrolled because external to the consciousness of the individual or group of individuals that is responsible for them. This means the loosing of a great stream of social activities which *as social* are without rational guidance. No control of modern life is to be hoped for short of a complete consciousness of the social character of business and industry, and the development of a self large enough to answer to the new environment with the substitution of thoughtful control for the instinctive controls of personal contact.

Associated charities illustrate one attempt to substitute thoughtful control for emotional action. Conversely a few department store managers and factory owners have awakened to the fact that it is the part of intelligence to recognize that people are factors in their problem and that ignoring the human side will bring its own revenge in failure to solve their own problem of economic efficiency in the management of their business. The social content is constantly bobbing up and making trouble. Some are beginning to realize that to overcome these conflicts they must understand the point of view of their workers and try to get the workers to understand theirs, to make their relationship human as well as commercial.

A similar conflict is in progress between the form of the family, which is still feudal and individualistic, and the content, which is as widely social as society itself. Men and women have tried to believe that the family has not changed through the centuries, that it is still the self-centered, self-supporting, well-nigh independent unit of mediæval times, that within its limits are produced the necessities of life so that the least change in its form would mean death and destruction to its members. The content of the family has always been recognized to be social but there is marked blindness to the actual range of its social relations. They are still conceived of as limited more or less to its

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immediate members. Just as society has ignored the fact that business has any content but money-making, so it has maintained its belief in the family as a sacred and unchanged institution. As a matter of fact, the family has undergone a complete revolution of all its activities and its center of gravity has been shifted to the factory, the brewery, the bakery, the delicatessen shop, the school, the kindergarten, the department store, the municipal department of health and sanitation, the hospital, the library, the social centers and playgrounds, and dozens of other similar institutions, while the control over the activities represented has likewise departed to the outer world. Far from being an independent unit, the family exists by virtue of its relations to these social organizations, it is formed by them and in turn reacts upon them, but the cry of "heresy," "sacrilege," goes up whenever anyone suggests that an intelligent appreciation of the change in the content of the family might result in a more suitable form since no amount of superstitious worship is going to restore the mediæval situation.

Just what, then, is to be expected in the case of the average woman whose only recognized environment is the home? Logically, she must be the kind of self that answers to the form of the family. Just in so far as society has been able to preserve the feudal family, it has also succeeded in preserving the feudal woman and until within the last few years all women have been theoretically of the feudal type. The feudal lady was the center of activity in her household which included a small community. She was the great producer and knew personally every handmaid, farmer, herd boy, or retainer who assisted her in keeping her family clothed, housed and fed. Her personality was organized on the basis of all these relationships, none of which were abstract or impersonal, even though they were not yet reflectively conscious. So far as they went these connections were all real and effective. Woman responded actively to all of them just because they lay within her control. She was mistress of the situation, a

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working part of the social scheme in which she found herself.

How does she compare with the modern woman in the home? There is supposed to be no difference except that producing is replaced by consuming. But just this change makes the fundamental difference of connecting the modern woman with a new world of production, increasing her relationship to outside institutions infinitely, and at the same time depriving her of any effective control over her own actions. How can an individual woman exert any essential control over consumption, while production is in the power of a huge system managed collectively?[3] It is useless to ask women to try to express themselves through their work as consumers as long as they stand alone outside the system in which production takes place, and without the technique through which it is controlled.

It is the same with all of the woman's interests. She may satisfy the emotional side in love for her family, but that love will not find any complete, active and intelligent expression except as she is enabled to exert an influence through organized society. Just the fact that she loves her husband and children will give her as an individual no measure of control over the environment that surrounds them. The home is no longer individualistic and the control over its interests is no longer within the power of the individualistic woman. Unless she becomes an active member of the larger social order and adopts its socialized technique, she must be content to be battered this way and that by social forces which are external to her.

In terms of self-consciousness, the woman, like the man, is not as large as the situation in which she acts, or exists passively. The relations of the family to the larger social institutions are accepted in a perfectly abstract way. No work that she could take up outside the home would be more impersonal as far as recognized social content is concerned than her occupation as consumer. She treats it as purely economic, oblivious of the part played by human

[3] Walter Lippmann, *Drift and Mastery*, Chap. IV.

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beings at the other end of the transaction. She is buying for her family and in that sense what she does has meaning for her, but she is quite unaware that her act is social also in its effect on the producer, the middleman, and other consumers. Even so the factory girl finds her work social in the sense that it helps to keep her family together in comfort. She works for them but she has no idea that her work has any other social value. It is just business.

The woman in the home, then, as well as the man in the world, has not a conscious self built up with reference to all the social relations by which she is affected and through which she in turn affects society. The chief difference is that the man does have some control since he has learned the power of organization and co-operation and can express himself through the ballot, whereas the woman, even if she were to become socially conscious, would be at the mercy of the machine until she had acquired modern methods of expression.

It is this last point which shows us why the modern woman is in worse straits than the modern man. The woman because she is allowed to remain passive, because she has no part in the system through which some control is possible, develops no sense of responsibility for any of the results which accrue. She takes good and bad with the same absence of any positive grip on the situation. She may avail herself in a small selfish way of any advantages which the system brings but she makes no attempt to exploit these seemingly abstract relations on a large scale for her own gain as men do. Passivity is the keynote of her existence because society has striven to keep the form of the home and the woman in it as they were in the Middle Ages even after the transformation that came with the industrial revolution.

The woman can never become a full-fledged, rational human being nor can she be held responsible for any of the conditions in modern life until society ceases to consider it essential to womanliness that she receive passively the impact of all the currents of present day organized exist-

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ence. As long as woman has no part in directing the forces which determine the family, herself, the least detail of her domestic life, society is retaining the lady of chivalry at the expense of conscious motherhood and is encouraging the immediate impulsive reactions of the simple situation at the price of deliberate reflection and social consciousness which alone are effective under the complex conditions of to-day. Just as the great labor movement is trying to bring the laborer to consciousness of his needs and possibilities, and society to awareness of the advantage of conscious labor, so the woman movement has before it a two-fold task; first, to make women conscious of their relations to a social order, second, to show society its need of conscious womanhood.

III.

The woman movement, viewed not as an isolated phenomenon but as an integral part of the vaster social evolution is thus seen to be only the woman's side of what from the man's angle is called the labor movement. It is a reaction against the same conditions and a demand for changes in the social order such that life will once more become harmonious. The accident of modern civilization has brought about inevitable conflict in the fundamental human impulses for both men and women. It has apparently allowed for complete, almost over expression of one set of impulses, at the expense of a partial or sometimes complete repression of the other. This has meant of course that the set of impulses which was allowed to develop unchecked by the other set was as abnormal and as far from a well-balanced rounded fulfilment as were the unexpressed impulses. The industrial and economic system of to-day, which has come into being more or less unconsciously and accidentally, has so divorced the economic and the social that it is only with a tremendous struggle for more inclusive forms of consciousness that we shall be able to recognize that the split is only apparent and that a system which not only believes in, but insists on, such a

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separation results in irreconcilable dualism in the lives of the men and women involved, persisting to the point of gigantic social problems, agitations and movements. Thus the labor movement symbolizes the impossibility of choosing between the fulfilment of the economic impulse and the fulfilment of the impulse to live. Men are granted unlimited opportunities to work, but no provision is made by the system for intelligent parenthood, for good citizenship, for a thoughtful development and use of the sex impulses. A man's parental expression is limited to caring for the economic welfare of his family. His own growth as a person must be sacrificed to the necessity of supporting himself and family. Work must be combined with life but our system makes little provision for such a combination hence forcing into opposition fundamental impulses clamoring for expression. The labor movement demands a new society in which creative, sexual, parental, and other social impulses will have an unquestioned right to fulfilment.

With women, on the other hand, social impulses are the only ones which are overtly recognized. Women are constantly forced into the economic world but the system ignores that fact and provides in no way for combining the peculiar social function of women with any economic function which they may find desirable or necessary. Such economic expression as has been conceded to them is confined to the home. Likewise, the other impulses, even the maternal, have no recognized place outside the limits of the individual home. For the woman, the system has no avenues of fulfilment foreseen and provided beforehand for any impulse whatsoever outside the home itself. Everything which has opened up has been at best, even after long and patient effort, only makeshift and haphazard. Society is always emphasizing the obligation of the woman to carry out the sex and maternal impulses at all costs and minimizing the need or value of the economic as far as she is concerned. In the conditions of living which are forced upon her, she is compelled to make the sorry choice of a limited sex and maternal expression or a

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doubtful and hazardous attempt on the economic side. In either case, she loses as far so society's aid or prevision is concerned. Only by the extraordinary force of a powerful personality will she make a signal success at either venture. Society no more makes a thoughtful attempt to give the maternal interests the most complete development and employment possible than it makes any pretense at all of using intelligently the natural impulse of the woman to be of economic value in the world. Much less does it offer a rational scheme for combining both motives within a possible form of living for the average normal woman. Thus the woman, even more than the man, faces a perfectly hopeless alternative. Neither side at the present moment is overwhelmingly attractive in itself even aside from the sacrifice of other impulses which its choice involves. What woman would willingly abandon love and children? What normal woman would accept a life in which she gave up all effort at serious work of genuine economic value to society? What woman would attempt without shrinking the almost impossible task of combining the two as affairs stand to-day. Above all, what woman would undertake wifehood and motherhood with the limitations placed on it by our present social system and feel that those two fundamental parts of herself could ever reach a satisfactory and adequate fulfilment?

That the peculiarly unhappy position of the woman is a reality and not an illusion can be detected in the arguments used to convince woman of her obligation to bear and rear. The element of sacrifice is so obvious that it is even seized upon and treated as a virtue, an added glory for the crown of the wife and mother. Moreover, this notion of necessary sacrifice on the part of the woman and the bare fact of motherhood itself have grown into a sort of fetish. The experiences of motherhood are exalted to the point where they are assumed to be a sufficient compensation for any and all sacrifices. To silence our own doubts and justify our procedure, we have come to believe in the inherent and absolute value to the woman of the mere

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fact of giving birth to a child, even though the emotions and purposes thus originated are never carried past the instinctive or intuitive level to a rationalized and socialized expression. We are afraid to face the fact that the home in its present unrelated, individual form does demand of women, and men too for that matter, a sacrifice so great as to have lost a great part of its value for spiritual growth, an overwhelming and crushing sacrifice of the possibilities of motherhood and fatherhood that defeats its own end.

All of this hopeless conflict among impulses which the woman feels she has legitimate right, even a moral obligation, to express, all of the rebellion against stupid, meaningless sacrifice of powers that ought to be used by society, constitutes the force, conscious or unconscious, which motivates the woman movement and will continue to vitalize it until some adjustment is made.

The labor movement and the woman movement do not understand always how close is their relationship nor do they see clearly that the reason why the obviously stupid and unsuitable social conditions which they combat are so difficult to alter is because human beings have not yet arrived at the stage where they know how to attack and solve social problems. The real goal of both movements is a society whose consciousness shall have reached the social stage and hence is capable of dealing scientifically with social as well as physical problems, a society which no longer leaves the social forms and relationships whereby human impulses are expressed to chance or physical force but subjects them to rational control.

In the physical world we have at last become conscious of our method and hence have acquired a control over physical conditions which promises to become more and more complete. If the desire arises in a community to do something for which present physical conditions make no allowance it becomes instantly a problem for the experts and it is only a question of time when a way will be found for the gratification of the felt need. The very basis of the physical problem is the thwarted desire of human beings

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to do something, and the method of obtaining the end is of course a full and free admission of the inherent right and value of the desire, a deliberate searching for every element involved in the physical conditions of the problem, and a careful experimental attempt to find the combination which will satisfy all the conditions. We should not consider our problem solved if the scientist said to us, "You do not really want this thing, you only imagine it, and in any case it would be bad for you to have it. You have managed to live all these years without it, why complain now?" Imagine such an answer to the determination to fly in the air. But, supposing, if we persisted in our wish to fly and began to talk about it and clamor for a way to be opened, the authorities were to turn on us, demand silence on pain of arrest and imprisonment, label us socialists or anarchists, and tell us we were rebelling against the fixed and righteous order of things as they are. Should we consider that any attempt had been made at solving our problem of how to make a machine that would fly in the air? Yet, impossible as it may seem, that is thus far the favorite method of dealing with any unsatisfied, insufficiently expressed set of human wants, whose fulfilment would mean change of the social order. First, deny the existence of the want; second, call it wicked, foolish, or injurious to individual and society; third, suppress it by force—and you have dealt with it adequately.[4]

The chief task of all social movements, then, must be at first to impress upon the rest of society the right of unsatisfied and unexpressed human impulses to constitute a real problem worthy of the same amount of expert attention whether they demand a new way of crossing the Atlantic Ocean or a new combination of work and social expression in the lives of men and women. This they will never bring about until there is a sufficient number of people who are so socially sensitive and adaptable that they feel within themselves as their own the impulses

[4] For a complete presentation of this failure of our civilization to handle its social problems see Mr. Walter Lippman's *Preface to Politics*.

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and points of view of all classes and both sexes. Such individuals will be the social scientists who will offer solutions to our social problems because they are able to place themselves at the very heart of these problems and thus to comprehend the conditions, the unsatisfied, conflicting impulses, upon the harmonization and fulfilment of which any solution that has the right to the name must be based. The fundamental purpose of the woman movement, therefore, as of any great social movement, is bound to be the producing of social scientists who will be capable of offering hypotheses that are based on the actual data constituting the problems, and the bringing about of an increasing social consciousness among all people such that they too will become sufficiently aware of the real content of social relationships to be willing to undergo the adjustments of the social order necessary to make actual the theories which promise salvation.

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THE JUSTIFICATION OF PUNISHMENT.

JOHN LISLE.

PUNISHMENT, in the sense of penal sanction, is justified by its relative necessity, although certain pseudo-philosophers think that neither this nor any other principle can permit the use of such a barbarous institution. The justification of punishment by necessity would be too apparent to need proof, however, in spite of such allegations except that, as the categorical recognition of a truth is always an advance in knowledge, so the categorical recognition of this truth prepares the way for a clear understanding of the bases of punishment and is a long step on the road to the reform of criminal law. Punishment is relatively necessary, because society must protect itself —the right of self-defence cannot be denied. It is axiomatic. Society protects itself in two ways: (1) From external attacks of all agents or forces except man, by eliminatory and preventative acts; (2) from internal attacks of its members by penal sanctions or punishment, another form of defence, contra-distinguished from defence against foreign attack in being directed against fellow-human beings, who enjoy the use of reason, and to whom punishment will bring a psychic reaction. Punishment is, therefore, addressed to the reason of the criminal, which adds peculiar elements and qualities to such defensive action, lacking in the purely eliminatory or preventative reaction to foreign attack. Thus the right of society to punish is that of any being or entity to protect itself and corresponds to the duty of the member to comport himself in accordance with the rules, and to the best interest, of the association of whose benefits he partakes.

This requirement limits the applicability of criminal law to members of one society. Reciprocity of rights and duties between groups is impossible, until, notwithstanding

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the retention of group distinction, some ties have welded them into one, and thus the two groups have become mere sub-divisions of a greater society. An example of such sub-division is found in the institution of classes in every country. Classes are of two kinds; traces of earlier distinct societies, welded into one by historical development, and associations, formed within a society by an identity of individual interests among some of its members.

In the last paragraph, we have made the limitation of criminal law, its application to members of one society, but in so doing, we must not be thought to have restricted the right of society to punish any man for an anti-social act. Every human being is socially accountable. For, although many peculiarities and variances remain which mark their subjects as members of different groups, still retaining their group distinctions, more common traits are found, which mark them as members of a single great social unit. In other words, while the different groups have not become one homogeneous society, now they are sub-divisions of a larger organization. Homogeneous heterogeneity again becomes heterogeneous homogeneity.

Society, beginning with the family, has grown in geographical and in ethical extent, until, in its principal relations, it is, as we have said, universal and world-wide including all humanity in one large union. There are social ties between aborigines and men of most advanced civilization, at least, in the recognition of the duty of obedience to custom, which is the crystallization of what has been found to be socially advantageous or necessary. No right of secession can be advanced, as a defence, by a member, who has committed some criminal act, because society is so universal that no member is able to secede in such a way as to escape its advantages, and, therefore, his duties; for the correlation between advantages and duties must not be forgotten. And yet it may be admitted that, although there is a social bond between all men, as we have said, and although there is a capacity for social unity between all men, and all men are potentially of one society, those

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who have never been fellow-members of the same subdivision are in a relation which gives rise to the right to apply penal sanctions. A man, in a land, to all of whose customs he is strange, does not commit a crime, unless his action contains the psychic element of an attack upon a group or unit of which the offender is a member. His psychic state is in no wise different from that of a dangerous criminal or alien enemy, against whom preventative or eliminatory acts are alone justified. The absence of familiarity precludes any appeal to reason, or any psychic effect, which connotes punishment. Such acts may be attacks upon a society but they are not anti-social in the strict sense, or criminal in the popular sense, because they are external and foreign rather than internal or domestic.

It must be clearly understood that we are not concerned with the organization of jurisdictions, which prevent local government from punishing foreigners for crimes committed against citizens abroad; this is purely political and does not touch the question of the right of punishment. Every country can now punish foreigners for crimes committed within its jurisdiction, because of the capacity and potentiality, which we have mentioned, that give rise to a presumption of social similarity, when accompanied by actual association and the consequent receipt of benefits. But the exercise of the right to punish would not be legitimate without the social similarity, existing or presumed, between the offender and his temporary neighbors. Such a presumption, as all legal presumption, is rebuttable by actual proof of falsity. Thus, a presumptive member of a society, a savage in a civilized country, is given an opportunity to prove his lack of the psychic state necessary in the commission of crime. The present refusal of the Courts to allow the plea of *ignorantia legis* is a temporary phase, based on convenience. As now understood, it formed no part of the law of Imperial Rome, but could be pleaded, by the *rustici*, in cases where *ignorantia* was not inconceivable. The punishment of a cannibal in London is based upon the presumption of his similarity to English-

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men. Such a presumption might well not exist prior to his leaving his native land, there would then be a *de facto* absence of similarity with Englishmen or familiarity with English customs. In the latter case, also, the cannibal would receive no benefit from the group of human society attempting to punish him. But there is sufficient social similarity between races, sufficient social unity among all nations, sufficient human social capacity and potentiality in all men, to subject a foreigner receiving benefits from a society to a duty to obey its rules under pain of punishment. This shows the unity of human society and the fact that punishment is relative to social benefits. Social benefits cannot be received by a member of a totally foreign group or an animal, for example, because there is no point of contact. And in this connection, it is well to note that social benefits are received by every member of society, that some receive less than others gives the former no claim to an exemption from his share of duties—as the benefits of the few are exceptional in quantity, so their burdens are exceptional in time of stress. But to return to our theme; when there is any point in common, the two groups form one large unit, although retaining distinctive class marks. The fact that the offender from the South Seas did not know any better than to act in the way in which he did, is no defence in London. If, however, an animal killed a man, the absence of social similarity would preclude any possibility of punishment. No need for a reaction other than elimination or immediate prevention against repetition would be felt, because the lack of similarity precludes the possibility of the psychic influence of punishment. The field of punishment covers all society, any man may be punished; it is limited only by humanity in *mala in se*, by benefits received in *mala prohibita*. If punishment is not applicable, prevention or elimination is always justified, the difference lying entirely in the appeal to reason in punishment, which prescribes the greatest mildness compatable with protection.

Thus much accepted, and crime recognized as an in-

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ternal attack upon the social life and pursuit of happiness, society is entitled to use the means of self-defence best suited to its preservation, protection and defence. What this may be it is not the object of this article to discuss. Our purpose is to prove that punishment, in the sense of social sanction, is justified by social necessity, and must, therefore, be moulded by, and can, therefore, be limited only by the pre-requisites of social protection.

With this end in view, we will first take up the origin of punishment, then trace its development, showing the incrustation of foreign ideas, which have resulted in the addition of new ends and the loss of the essential goal of criminal law. It can be said that the word "punishment" is inaccurate, because of the element of expiation contained in it. A contemporary English writer, believes that "'punishment' and 'infliction of pain' are convertible terms."[1] While Mr. Justice Holmes writes of "vengeance as an element, though not the chief element of punishment."[2] But he qualifies his statement in two ways: first, he looks upon vengeance as "the fitness of making" our neighbors "smart"[3] for doing wrong, thus depriving vengeance of any significance greater than that of the phrase, social sense. At a subsequent point, too, he takes up "the law's indifference to man's particular temperament" which he justifies by the fact that "public policy sacrifices the individual to the general good[4] and thus states that punishment is aimed at social protection and is justified by its relative necessity.

In this way, Justice Holmes shows the habit of using old language and phraseology, while he explains its proper meaning away. We have continued the use of the word, punishment, however, to denote the reaction of society through its organized department of criminal law, because

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[1] *The Conditions of State Punishment* by E. Bowen-Rowlands in the Quart. Rev. Oct., 1914, p. 346.

[2] Holmes, *The Common Law* (Boston, 1881) p. 45.

[3] Holmes, *id.*, p. 45.

[4] Holmes, *id.*, p. 48.

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the more accurate but unusual term, penal sanction, contains the statement of a conclusion. The origin of punishment will show its purpose and its proper limitations, for, as the great Italian philosopher, the precursor of the Historical School, Vico, said, the essential quality of an institution is shown in its genesis. [5] But the alterations in the concept of punishment which have taken place under foreign influences show the cause of the present failure of criminal law, which has brought about a doubt of its justification. A correct understanding of the origin and development of punishment will point the way to alterations, old in method, and new in detail (because of scientific progress), which will reinstate this important social function in a position of beneficent activity.

The right to self-defence must, as we have said, be taken as axiomatic. In remote antiquity, property developed; men expended their labors upon objects whose usefulness was not consumed in the period of creation;—weapons and implements could be used more than once. At this period, the right of self-defence was extended to the results of man's activity. The necessity of protecting that part of one's personality, which was shown by the chattels, upon which activity had been expended was felt. And it was found, that their defence required the aid of others and thus the family, which had not been needed for self-defence when personality was limited to the individual and his corporal entity, resulted. And a unit, larger than the individual, was formed. At first the family was the unit, later a group of families, the number of which has constantly increased. At first necessity kept the family or group together. Its rules were simple and disobedience to any of them by a member entailed his immediate destruction by some foreign enemy.

As the group increased in size and the means of protection from its enemies became stronger and more permanent, however, it became physically possible for a member

[5] See, Holmes, *id.*, p. 1. "In order to know what the law is we must know what it has been and what it tends to become."

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to disregard some rules without a natural reaction immediately ending his offensive power together with his existence, although his act weakened the society of which he was a member. At the same time the advantage of association, as its constant and immediate necessity decreased, was recognized and appreciated. Necessity arising outside of society gave rise to society, and the existence of society increasing the complication of life made social organization always more advantageous. When, therefore, the immediate reaction of complete destruction by foreign enemies lessened, it became necessary to adopt some means for the protection of society from disobedience to its rules by its members, that is, from internal attack. Such protection from criminal activity had not been necessary at the beginning because, as we have said, the means of existence were so threatened by external enemies as to render any breach of them fatal to the offender. At that stage in the history of humanity, there was no criminal law. And even at the beginning of the second period when certain breaches of social relations occurred, there was no real criminal law, for the attack of one member upon another was sufficiently met by the payment of damages.[6] Civil remedies, in other words were applied.

But with a greater increase in the size of the groups and the betterment of the means of defence against foreign enemies, such remedies were found insufficient and punishments were inflicted because they had become necessary. This was legitimate in itself, for social necessity knows no law, but its cause and the necessity for it mark the limits of the right to punish by the limits of the need of protection. Penalties, however, soon exceeded such limits. And this fault was increased through a foreign element of class selfishness, for the chief or head, however chosen, came to look upon the group as his property. His representative position was transmuted into one of ownership. And all anti-social acts were, therefore, violations of his rights of property, for which he was entitled

[6] See Bowen-Rowlands, *id.*, p. 346.

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to damages. This was, of course, an over-development of the idea of social protection and cannot be justified. It is due to an incrustation of an idea by analogy. For example, commons became the land of the State, or overlord, through the elapse of years, during which its or his protection control their use. Society has no right of property, for whose violation damages can be imposed. The State itself may only own what is necessary to carry on its functions. Society can own nothing. To distinguish; the State is an organization, purposely formed for a purpose like any other corporation; society is an entity, the result of growth. It has a right of existence, because of its usefulness to progress and the benefits it confers, which entails the right of self-defence. A breach of peace or a riot can and must be stopped and its repetition prevented (in fact it should be prevented in the first instance, but this was undreamt of in the stage of which we are writing) by society by every means in its power. But there was no proprietary right in the prince entitling him to damages considered as such *per se* and not even as a deterrent. The fact that the ruler was generally the head of the church soon resulted in making crime an offense against the deity. This resulted in increased damages directed to the pacification of the latter, entirely distinct from any idea of social protection. In this way, another error crept into the concept of punishment. This error has been fertile in results, for throughout Christendom, it enabled the religious concept of expiation to enter the juridical sphere. This religious element was transformed under the general influence of Christianity into one of morality, and the moral reformation or amelioration of the criminal came to be looked upon as the justification of his punishment. And under the resulting confusion, the goal of criminal law, the protection of society from attacks by its members was lost sight of for centuries.

In the latter half of the eighteenth century, Beccaria, moved by the atrocities in punishment, began to study crime and punishment. His work, "Dei delitti e delle

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pene" published in 1764 in Milan, was the first modern work on criminality. Its historical influences upon the criminal law of Europe and America from that day to this cannot be over-estimated.

The objects of punishment were generally thought to be repression, reformation, and deterrence. With these objects as a basis, deontology proved the futility of the penal systems and the latter were made the object of systematic and bitter criticism. This was legitimate as far as the systems themselves were concerned but by the abuse of terms it has been extended to include the right of punishment. Correctly analyzed, however, these attacks upon the systems of criminal law will be seen to be limited to faults due to the entrance of foreign concepts into its field. For while punishment is repressive, reformative and deterrent,[7] it is not expiatory or proprietary.[8]

Reformation of the criminal must not be taken as moral amelioration *per se;* deterrence must not be taken to permit the criminal to be used to teach a moral lesson; reformation, deterrence, and repression are only justified and justified only by the protection which they give.

The value of punishment as a deterrent has been doubted and, in fact, proved to be useless beyond the peradventure of a doubt. Certainty of detection, however, an element in punishment, has deterrent force. The failure of the present system of punishment as a deterrent, reformative, or repressive (except in cases of capital punishment and the rare cases of long term imprisonment, in which latter case, the repression and imprisonment are conterminous), is an admitted failure. And this phrase shows the survival

[7] Not in object, although in means, it may be. Its object is, as we have said, social protection; its means include repression, reformation, and deterrence.

[8] It is true that the reform aimed to include in every criminal judgment a verdict of damages in favor of the victim of the crime, to be advanced immediately by the political division in which the crime occurs, and to be repaid by the criminal to it, is excellent, but this is a procedural reform and does not affect the right of society to react for its own protection in any way that may be necessary and gives it no right to exact damages for the violation of any property right in it.

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of the real object of punishment, for when it is said that the criminal courts are a failure, the incrustation of foreign concepts is forgotten and the real aim of punishment, social protection, is actually recognized by the layman. He does not think of it as a failure in the moral uplift or spiritual reformation of the criminal, but in its practical efficiency in giving protection and in insuring personal safety. By both routes, the intuition of the layman and the genetico-historical method of the philosopher, the simple fact is recognized that the goal of criminal law is social protection. This is the clearest proof that the right to punish is justified by relative necessity. The need of using the means best suited to the end follows as a corollary. But there can be no question of the existence of the right. It has been doubted because past political phases, past religious beliefs, themselves confused with political theories, likewise buried in the past, have imposed foreign ideas upon it, and clothed it with foreign forms. These ideas through ideo-emotive arrest, have clung to the proper concept of punishment and lived in the phraseology retained by popular usage and legal technicality.

Past philosophical schools have also exerted an influence, productive of bad results. The myth of an ideal past and the hope in a millennium, which, to quote Stevenson, "deserts us at no period of our existence," so that "from first to last, and in the face of smarting disillusions, we continue to expect" it, "and that so confidently that we judge it useless to deserve" it, have harmed criminal law; the former by making the necessity for punishment a disgrace to the criminal and to the society, reducing it to a par with revenge. Mr. Justice Holmes writes, "It is commonly known that the early forms of legal procedure were grounded in vengeance."[9] But is this historically true? For the early form of punishment was a fine.[10] And at a later point, he says:

[9] Holmes, *id.*, p. 2.

[10] Cf. Calisse, "Storia del diritto penale italiano dal secolo VI al XIX" (Florence, 1895), Vol. II, *passim.*

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"It certainly may be argued, with some force, that it has never ceased to be one object of punishment to satisfy the desire of vengeance. . . . The statement may be stronger still, and it may be said, not only that the law does, but that it ought to, make the gratification of revenge an object. . . . The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, whether right or wrong. If people would gratify the passion of revenge outside of the law, if the law did not help them, the law has no choice but to satisfy the craving itself. and thus avoid the greater evil of private retribution." [11]

To this, it can but be said that there is a wide difference between vengeance and "the actual feelings and demands of a community," whose disregard will give rise, not to vengeance, but to private retribution. What we claim is that criminal law, with its punishments and penalties is a failure, for the very reason that it does not correspond with actual demands, but we advance the theory that it is not because such punishment lacks the spontaneous passion of vengeance, but, on the other hand, because it does not fulfill its duty of giving protection and insuring safety that it fails.

But, to return to our point, the verb to punish, contains thoughts of expiation, morality and false history, given moral weight, which have nothing to do with society's right of self-defence or with criminal social accountability. Reformation is tarred with the same brush and its use is more insidious, because the reformation of a criminal is one of the best means of defence against him. Reformation is a factor in social self-defence, it is true, but it must be strictly kept within the sphere of criminal law, for it is not an end in itself. So it is with deterrence, as a means of social protection; it is legitimate, if feasible and productive of results, but it savors strongly of suffering for conscience' sake, and must be closely watched. In fact the phrase guilt, applied to crime, shows the existence of

[11] Holmes, *id.*, pp. 40, 41, 42.

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a religious idea in criminal law, and these phrases had better be discarded because of the misconceptions which they entail, and whose number increases with use.

Thus Bowen-Rowlands, whom we have quoted, writes, "The State is not concerned with either positive morality or religious canon, except insofar as such affect the maintenance of the said standard of conduct. This being so, the justifiable purposes or ends of the State punishment of individuals are:

1. The protection of the community from a continuance of individual wrong-doing by deterring the individual wrong-doer. It should be noted that reformation of a wrong-doer, using the term as denoting the extinction of anti-social desires is *qua* punitive procedure only to be regarded when it is effected wholly or in part by a deterrent agency.

2. The deterrence of other potential wrong-doers by demonstrating to them the futility and painful consequences of anti-social conduct.

* * * * *

No punishment even of death or of preventive detention is deemed justifiable if it is imposed only in order to deprive an offender of the physical ability to continue in a course of wrong-doing."[12]

This can mean nothing but that the object of punishment is to protect society and reform the individual and deter others from crimes; whereas the object of punishment is to protect society, if so be it that it can be done, by reforming the criminal and deterring others from emulation; but social protection is the goal, first, last and all the time. Such opinions or the expression of opinion in such language are harmful to any progress in criminology. The underlying ideas are misconceptions, entailed by a past historical phase; they have survived their usefulness. The false doctrines, arising from the continuance of the theories of the past, form an endless chain of bad influ-

[12] Bowen-Rowlands, *id.*, p. 340–1.

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ences. The errors of the past allowed and caused the misconceptions. The retention of words adopted in the period of error keep the error alive after science has shown the mistake.

In fact, the legal concept of intent (with the consequent confusion in case of attempt) is used to give a moral tinge to the prerequisites of punishment. It is used to denote moral culpability in place of merely showing the connection of the individual with the result of his activity.

Repression covers by far the largest part of protection. There is but one better method—prevention—criminal prophylactics—is the criminal law of the future. In the days to come the first and only end of punishment, social protection, will be reinstated free from all entangling alliances and the means adopted will be largely preventative. When a crime is committed the means determined to be the best by a board of criminologists, alienists, doctors, and sociologists—will be applied to prevent its repetition by rectifying the oversight which gave rise or opportunity to its commission. In the meantime, it is well to avoid the errors which come from a mistaken concept of the end and justification of punishment and form an erroneous theory of its origin in the baser instincts of man.

But, apart from this, these sub-divisions of the abstract means to the goal of punishment, are looked upon as ends in themselves, and the concrete means are considered as instruments for their attainment. This error must be overcome. By the genetico-historical method, it has been shown that the origin of crime was the increasing complication and perfection of society, which destroyed the natural necessity of social co-ordination, and that punishment was originated to overcome the resulting license and protect society. It has been shown that criminal law is pronounced a failure by the man in the street, not because it does not reform the criminal or help others by example, but because it does not put an end to commission of crime. Popular thought and the most advanced philosophical method both lead to the same inevitable conclusion—that

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punishment, in the sense of social sanction, is aimed at the prevention of crime. Crime is, *ex hypothesi*, any anti-social act. The necessity for the prevention of crime is measured by the need for the existence of the body to be protected. Hence, punishment is necessary in relation to society; it is a relative social necessity. It is not only an attribute of society, but a prerequisite and essential part of social existence. The right of punishment is justified by the benefit conferred by society upon men. It can only be logically denied as a part of the larger denial of the advantages of social existence, and of the economic, moral, and ethical progress of modern civilization from the nomadic life of prehistoric eras.

JOHN LISLE.

OF THE PHILADELPHIA BAR.

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THE PERMANENT ELEMENTS IN THE HEBREW LAW.

EDWARD CHAUNCEY BALDWIN.

THE Hebrew law, though the most neglected outgrowth of ancient Hebrew thought, is by no means least important. Indeed it is in many respects the most amazing product of the genius of this remarkable people. Its most astonishing characteristic is its universality—the fact that it contains so many elements of permanent value for the ordering of human relations. If any one doubts that the Hebrew law was to a marvelous degree adaptable to conditions wholly different from those it was originally designed to meet, he will find a backward glance at our colonial history sufficiently convincing.

The oldest and most reliable authority upon New England colonial history is Governor John Winthrop. In his *History of New England from 1630–1649*, written in the form of a diary, he tells us, under date of May 22, 1639, about the origin of the legislation of Massachusetts colony. "The people," he says, "had long desired a body of laws, and thought their condition very unsafe, while so much power rested in the discretion of magistrates. . . . At last it was referred to Mr. Cotton and Mr. Nathaniel Warde, and each of them framed a model, which was presented to this general court, and by them committed to the governor and deputy and some others to consider of, and so prepare it for the court in the third month next." More exact information as to the nature of this code or "model" is furnished us by another contemporary document—*Abel being dead yet Speaketh; or the Life and Death of Mr. John Cotton* (London, 1658) by John Norton of Ipswich. Here we read: "In order whereunto the Court considering That that people of God, all the members of which Republic were Church-members, were to be gov-

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erned conformably to the Law of God, desired Mr. *Cotton* to draw an Abstract of the Judicial Laws delivered from God by Moses, so far forth as they were of moral (*i.e.* of perpetual and universal) equity. Which he did, advising them to persist in their purpose of establishing a *theocraty* (*i.e.* Gods government) over Gods people."

Of the two clergymen, Cotton and Ward, who separately formulated codes for the colony, the latter had the advantage of having received in England a thorough legal training. Naturally, he based his code mainly upon the English common law, though, in addition, he adapted many features of the Hebrew law. How much he owed to the latter becomes at once apparent upon an examination of his code as it was finally (in 1641) adopted under the title of "The Body of Liberties." The following is a transcript of the section headed "Liberties of Servants." The comment in parentheses is my own.

85. If any servants shall flee from the Tiranny and crueltie of their masters to the howse of any freeman of the same Towne, they shall be there protected and susteyned till due order be taken for their relife. Provided due notice thereof be speedily given to their maisters from whom they fled. And the next Assistant or Constable where the partie flying is harboured. (This is obviously an adaptation of the Hebrew law regarding runaway slaves as given Deut. 23: 15–16. This law forbade those with whom an escaped slave had taken refuge to return him to his master.)

86. No servant shall be put of for above a yeare to any other neither in the life time of their maister nor after their death by their Executors or Administrators unlesse it be by consent of Authoritie assembled in some Court, or two Assistants.

87. If any man smite out the eye or tooth of his man servant, or maid servant, or otherwise mayme or much disfigure him, unlesse it be by meere casualtie, he shall let them goe free from his service. And shall have such further recompense as the Court shall allow him.

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(This is a paraphrase of the Hebrew law, Ex. 21: 26–27, which states that bodily injury at the hands of the owner that caused the loss of an eye or a tooth entitled the slave to immediate manumission.)

88. Servants that have served diligentlie and faithfully to the benefitt of their maisters seaven yeares, shall not be sent away emptie. And if any have bene unfaithfull, negligent or unprofitable in their service, notwithstanding the good usage of their maisters, they shall not be dismissed till they have made satisfaction according to the Judgement of Authoritie.

(This is plainly an adaptation of the Hebrew law providing for the freeing of Hebrew bondmen in the sabbatical year of their service, Ex. 21: 2–6. They were entitled to a parting gift. The gift could not be made in money, but must be from the flock, the threshing floor, and the wine-press, Deut. 15: 12–15.)

Equally Hebraic are the laws governing offenses punishable by death. Section 94, headed "Capitall Laws," reads as follows:

1.

Deut. 13.6.10
Deut. 17.2.6
Ex. 18.10

If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death.

2.

Ex. 22.18
Lev. 20.27
Deut. 18.10

If any man or woeman be a witch, (that is hath or consulteth with a familiar spirit) They shall be put to death.

3.

Lev. 24.15.16

If any person shall Blaspheme the name of god, the father, Sonne or Holie ghost, with direct expresse, presumptuous or high handed blasphemie, or shall curse god in the like manner, he shall be put to death.

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4.

Ex. 21.12
Numb. 35.13.
14.30.31

If any person committ any wilfull murther, which is manslaughter, committed upon premeditated mallice, hatred or Cruelties, not in a mans necessarie and just defense, nor by meere casualtie against his will, he shall be put to death.

5.

Numb. 25.20.
21
Lev. 24.17

If any person slayeth an other suddainely in his anger or Crueltie of passion, he shall be put to death.

6.

Ex. 21.14

If any person shall slay an other through guile, either by poysoning or other such divelish practice, he shall be put to death.

(The seventh, eighth, and ninth sections, which are in effect the Hebrew laws against various forms of unchastity, I omit.)

10.

Ex. 21.16

If any man stealeth a man or mankinde, he shall surely be put to death.

11.

Deut. 19.16.
18.19

If any man rise up by false witnes, wittingly and of purpose to take away any mans life, he shall be put to death.

12.

If any man shall conspire and attempt any invasion, insurrection, or publique rebellion against our commonwealth, or shall indeavour to surprize any Towne or Townes, fort or forts therein, or shall treacherously and perfediouslie attempt the alteration and subversion of our frame of politie or Government fundamentallie, he shall be put to death.

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The Connecticut Colony, like Massachusetts, adopted in part the Hebrew *torah*. In 1637, representatives of the settlements at Windsor, Hartford, and Wethersfield, the aggregate population of which was then about eight hundred souls, met and adopted a constitution—"the first written constitution," Fiske says, "that created a government." Similarly, Bryce calls it "the oldest truly political constitution in America." At this convention, the delegates solemnly covenanted "in our Ciuell Affaires to be guided and gouerned according to such Lawes, Rules, Orders, and decrees as shall be made, ordered, & decreed." Gradually thereafter, the Connecticut civil code was formulated. By 1642, there were twelve capital laws. These agree word for word with those of the parent colony, Massachusetts, which, it will be remembered, are those of the Hebrew law. In 1646, the general court commissioned a certain Mr. Ludlow "to take some pains in drawing forth a body of Lawes for the gouernment of this commonwealth." This code, known as "Mr. Ludlowe's code," was formally "concluded & established" by the general court in May, 1650. It raised the number of the capital laws to fourteen, two being added to the list established in 1642. The two added are as follows:

13. If any Childe or Children aboue sixteene yeares old and of sufficient vnderstanding shall Curse or smite theire naturall father or mother, hee or they shall bee put to death, vnless it can bee sufficiently testified that the Parents haue beene very vnchristianly negligent in the education of such Children, or so prouoake them by extreame and cruell correction that they haue beene forced therevnto to preserue themselues from death (or) maiming. Exo. XXI: 17; Levit. XX. (9); Exo. XXI. 15.

14. If a man haue a stubborne and rebellious sonne of sufficient yeares and vnderstanding, viz: sixteene yeares of age, which will not obey the voice of his father or the voice of his mother, and that when they haue chastened him, will not harken vnto them, then may his Father and Mother, being his naturall parents, lay hold on him and

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bring him to the Magistrates assembled in Courte, and testifie vnto them that theire Sonne is stubborne and rebellious and will not obey theire voice and chastisement, but liues in sundry notorious crimes, such a Sonne shall bee put to death. Deut. XXI. 20, 21.

The third of the New England colonies to adapt to its uses the Hebrew law was New Haven. For a year after its establishment in March, 1638, the New Haven colony had no body of laws except a "Plantation Agreement." According to this "agreement," we are told (*New Haven Colony Records*, Vol. I., p. 191) that "It was aggreed, concluded & setled as a fundamentall law, not to be disputed or questioned hereafter, that the judiciall lawes of God, as they were deliuered by Moses, & expownded in other parts of scripture, so farre as they are a fence to the morall law, & neither tipicall, nor ceremoniall, nor had refference to Canaan, shalbe accounted of morrall & binding equity and force, and as God shall helpe shalbe a constant direction for all proceedings here, a generall rule in all courts of Justice how to judge betwixt partie and partie, & how to punish offenders, til the same may be branched out into perticulers hereafter."

The dream of the founders of the commonwealth was to establish a theocracy. Of these founders, the most influential in formulating the ideals of the colony was John Davenport. The son of a mayor of Coventry, an ordained clergyman of St. Stephen's Church, Coleman Street, London, he had offended King James by reproving him for profanity, and had come to New Haven in 1639, where he remained for thirty years one of the most influential men in the colony. His ideals of government are set forth in his *Discourse about Civil Government in a New Plantation*, 1638. The *Discourse* is a defense of theocracy—an attempt to prove the best form of government to be that in which "(1). The people that have the power of chusing their Governors are in Covenant with God. (2). Wherein the men chosen by them are godly men, and fitted with a spirit of government: (3.) In which the Laws they rule by

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are the Laws of God: (4.) Wherein Laws are executed, Inheritances allotted, and civil differences are composed, according to Gods appointment: (5.) In which men of God are consulted with in all hard cases, and in matters of Religion, is the Form which was received and established among the people of Israel whil'st the Lord God was their Governor as the places of Scripture alledged shew; and is the very same with that which we plead for. . . . ''

In view of such a declaration from one of the leaders of the colony, it is not surprising to find that the government of the New Haven colony was from the beginning a theocratic one. The community was not to be a state but a church. No man could enjoy the full rights of citizenship unless he was a church member. "And for the due carrying on of all affaires according to God (I quote from the *New Haven Colony Records*, Vol. I., p. 191) it is also agreed, concluded & setled for a fundamentall law as aforesaid, that noe man of what degree or quality soever shall at any time be admitted to be a free burgess within this plantation, but such planters as are members of some or other of the approved churches of New England, nor shall any but such free burgesses have any vote in any election, nor shall any power or trust in & for the ordering of any publicque civill affaires, be at any time put into the hands of any other then such members." Trial by jury was rejected as lacking scriptural authority. For the same reason, the English laws of entail and of primogeniture were avoided. And it was formally declared "that the Word of God shall be the only rule attended unto in ordering the affaires of Gouernment."

Consistently with such a declaration, the first printed code of the colony was formulated. When in 1665 the general court of the colony ordered that "some able, judicious, and Godly man" should be appointed to form a code of laws for the colony, and Governor Eaton had been selected for the purpose, the general court desired him, "for his own instruction, and to aid him in his arduous task," to examine the laws of the colony of Massachusetts, and

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also the above-mentioned *Discourse on Civil Government in a New Plantation* by John Davenport. Both these documents Eaton seems to have perused to some purpose, for the resultant code [1] is very much like the Massachusetts code, except that it is in tone even more scriptural and more theocratic. The capital laws of the New Haven colony were borrowed almost word for word from those of the Massachusetts colony. The scripture citations are very numerous, every detail of colonial organization being supported by as many references as if it were a controverted theological doctrine. Illustrative of the scriptural and theocratic tone of the code are the first two paragraphs defining the duties of the general court, which read as follows:

1 This court thus framed, shall first, with all care and diligence, from time to time, provide for the maintenance of the purity of Religion, and suppress the contrary, according to their best light and directions from the Word of God. Psal. 2: 10, 11, 12. 1 Tim. 2: 2.

2 Secondly, though they humbly acknowledge that the supreme power of making laws, and of repealing them, belongs to God only, and that by him this power is given to Jesus Christ as Mediator, Math. 28: 19. Joh. 5: 22. And that the Laws for holinesse and Righteousnesse are already made, and given us in the scriptures, which in matters morrall, or of morrall equity, may not be altered by humane power or authority; Moses only shewed Israel the Laws and statutes of God, and the sanedrim, the highest Court among the Jews, must attend those Laws. Yet civill Rulers and Courts, and this Generall Court in particular (being intrusted by the freemen as before) are the ministers of Good people; and have power to declare, publish, and establish, for the plantations within their Jurisdictions the Laws he hath made, and to make, and repeale

[1] Five hundred copies were printed for the use of the colony. The title page reads: New Haven's Settling in New England and some Laws for Government. Published for the use of that Colony. London, Printed by M. S. for Livewell Chapman, at the Crowne in Popes-head Alley, 1656.

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orders for smaller matters not particularly determined in scripture, according to the more Generall rules of Righteousnesse, and while they stand in force, to require due execution of them. Esay. 33: 22. Deut. 5: 8. Deut. 17: 11. Rom. 13: 4.

More than once the Court of Magistrates is exhorted, "when the case requires it, . . . to consider the mind of God as it is revealed" in numerous passages of scripture duly cited for their enlightment.

In explanation of such reverence for the Hebrew law as was shown by the New England colonies, it is not sufficient to say that the colonists were Puritans, and therefore pledged to regard the Bible as the final authority in faith and morals. The colonial leaders were sensible men. Their conduct of inter-colonial affairs shows clearly that, instead of being unpractical fanatics or even doctrinaires, they were astute politicians, in the best sense of that term, and clear-sighted statesmen, skilled in the management of public matters. As such, they chose to adapt the Hebrew law to contemporary conditions, not because it was sanctioned by scriptural authority (though, naturally, this consideration influenced their choice), but because they recognized in the *torah* certain elements of permanence.

Such a recognition even a cursory examination of Hebrew law will amply justify. It was admirably fitted to become the *corpus juris* of the new land, not only because of its emphasis upon the close connection between the religious and moral life, but because it embodied the essential principles of popular liberty.

By no other ancient code was human life so carefully safeguarded, simply because by no other ancient people was the sacredness of human life so fully recognized. The presence in the Deuteronomic code of the law regarding house-building, "Thou shalt make a battlement for thy roof that thou bring not blood upon thy house, if any man fall from thence" (Deut. 22: 8), and the law, equally unparalleled in other ancient legislation, regarding homicide

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by an unknown person (Deut. 21:1–9), is to be accounted for by the Hebrew sense of the sacredness of human life.

This finds expression, also, in Israel's penal code. As compared with the one hundred and sixty felonies mentioned by Blackstone in his *Commentaries on the Laws of England* (1769) as punishable by death, the only capital crimes among the Hebrews were varieties of three offenses—murder, unchastity, and idolatry. It is noteworthy in this connection that the New England colonists by their partial adoption of the Hebrew law, reduced the number of capital crimes, which at that time in England were thirty-one, to twelve.

To Israel's sense of the sacredness of human life must be ascribed, also, the custom of treating humanely even condemned criminals. Cruel and horrible punishments, such as crucifixion as practised by the Romans and Carthaginians, the mutilations in vogue among the Egyptians as punishment for parricide, the impalement used by the Persians, the boiling in oil resorted to by several ancient peoples, the burying alive, not unknown among the Romans, and the disembowelling and quartering of comparatively recent times in England, were all unknown in ancient Israel.

The Hebrews were the only people of antiquity to mitigate the severities of the death penalty by rendering it as painless as possible. Just before his execution, the condemned criminal was given a stupefying draught composed of myrrh and frankincense in a cup of sour wine. This produced a considerable degree of anaesthesia, and a more or less complete indifference on the part of the convict to his fate. The furnishing of the death-draught was in Jerusalem the office of the women. In other towns the materials were required to be purchased at public expense.

The Hebrew law not only reverenced and protected human life, but it carefully guarded the rights of property. Stolen goods were to be returned fivefold (Ex. 22:1,3). In default of such restitution, the thief was to be sold as a bondman till the sabbatical year released him. Most

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explicit and considerate of the rights of the property owner were the regulations governing fiduciary responsibility (Ex. 22: 7–15). If it could be shown that "money or stuff" entrusted to the care of another was lost through the fault of the trustee, he was obliged to "pay double unto his neighbor." Equally stringent were the laws specifying the liability of those who destroyed property by either carelessness or neglect (Ex. 22: 5, 6).

Perhaps the surest guarantee of the liberty of the Hebrew citizen was in the laws governing the ownership of land. The land was inalienable, and it belonged to God. This principle of land-ownership is clearly stated in the Levitical law (Lev. 25: 23). "And the land shall not be sold in perpetuity; for the land is mine: for ye are strangers and sojourners with me." If a man became poor, he might sell his land, but reserving the right to redeem it either through his nearest relative, or by his own efforts. Should it not be possible for either him or his family to re-purchase the land, it would remain in the hand of the purchaser till the jubilee year, when it would automatically revert to the original owner (Lev. 25: 23–28). Such a system of land tenure avoided the two opposite extremes—of state socialism that treats the land as belonging to the state, and of a selfish individualism that permits unscrupulous individuals to acquire vast estates and virtually to dispossess their poorer neighbors. Now, history shows nothing more clearly than that those who own the territories of a state will exercise the strongest influence over the state's public affairs. It is possible for the land to be in the possession of one, of the few, or of the many. If the ruler owns the land, then those who cultivate the soil will be wholly subject to his will; and the government will be an unlimited monarchy. If the ownership of the land is vested in the few, the real power of government will be in the hands of an aristocracy, while those who till the soil will be mere vassals. If, however, the land be the inalienable possession of the citizens, the true power and authority of government of the state will be in its citizens; and

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the state will be a true democracy. Since the latter was the case in ancient Israel, the sovereignty resided in the whole body of the people.

In the Hebrew state there was, theoretically at least, absolute equality among its citizens. There was absolutely no recognition of a privileged class. The institution of the priesthood, and the setting apart of the tribe of Levi for their peculiar function, with the consequent development of a sacerdotal and literary aristocracy, was a late phase of legalism, and was entirely opposed to the principles of the early codes. In contrast to the polity of ancient Egypt, for example, there were to be recognized in Israel no hereditary castes. No dignities nor special privileges were to be assigned to one class, and no inherited inferiority to another. All were to be equally privileged, and all were amenable to the same duties.

Because Hebrew law, owing to its emphasis upon the sacredness of human life, upon the property rights of the individual, and consequently upon the equality of its citizens, contained the germs of modern democratic freedom, it was found suited to become, with some modifications, the *corpus juris* of the colonists of the new world. That in three instances it furnished a practical working code of laws affords convincing proof that Hebrew law contained elements of permanence. Such universality and timelessness are due to its having been an expression of fundamental laws of human life.

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NIETZSCHE'S MORAL AIM AND WILL TO POWER.

WILLIAM MACKINTIRE SALTER.

"WILL to Power" is primarily Nietzsche's analysis of reality—he finds an impulse of this sort at the bottom of human nature, and then proceeds to construe life and the world in general in terms of it.[1] The doctrine is originally psychological and cosmological, and has nothing to do with ethics. So and so man and the world are made, here lies the bottom spring (or springs)—such is its meaning.

As a matter of fact, Nietzsche was not laudatory of power in his early days,[2] nor was he unqualifiedly so in his second period, and some kinds of power did not have his admiration even in the last period.

Indeed, power in and of itself was never a standard to Nietzsche—and since there is so much misconception on this point, it may be well to bring out the fact clearly at the outset, and then later indicate the connection between power, or the will to it, and the general ethical aim which he proposes, as stated in an earlier article.[3]

I.

Use is made by some[4] of an incident in Nietzsche's early life, when he was caught out in a thunder storm and felt, as he said, an incomparable elevation in witnessing the lightning, the tempest, the hail—free, non-ethical forces, pure will untroubled by the intellect.[5] It was an experience such as any reflecting student, harassed in various ways, might have, and is essentially Schopenhauerian in the manner in which it is described. But though he felt the glory of nature's life, he did not set up nature as a model, then or at any time. In a striking passage in one of his later books, *Beyond Good and Evil*, he speaks of the impossibility of living according to Nature. Nature, he

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says, is without measure, aim, consideration, pity or justice, at once fearful, waste and uncertain, indifference itself being power—one recalls Matthew Arnold's sonnet to "Nature." The Stoics, he observes, really put an ideal into nature, and then found the ideal natural![6] Indeed, Nietzsche dissents from the whole general conception, so common in our day, of morality and life as adjustment to external conditions. To be determined by our environment, rather than shape it more or less ourselves, is to him a sign of decadence.[7] Much that looks like a simple effect of environment is, he urges, really the result of an active adaptation from within—exactly the same circumstances being treated in different ways (according to the nature of the inner impulse).[8] He criticises Spencer and Darwin for overvaluing outer conditions[9]—he would probably have agreed with William James against John Fiske in their famous controversy about "Great Men" some years ago. A genius, he says, is not explained by the conditions of his rise,[10] and he counts it one of the weaknesses of modern life that we have forgotten how to act, and only *react* on incitement from without—examples being historians, critics, analyzers, interpreters, observers, collectors, readers and science in general, *i. e.*, all who merely note what is and do not create.[11] It is from nowhere save from within and from the innermost impulses of our nature that Nietzsche takes his moral ideal.

Yes, so strong is the idealizing tendency with him that he refuses even to take the dominating morality of our time as the ideal of morality. At present the average man, the social man, is in the foreground and every thing is estimated from the standpoint of his interests, to the prejudice of rarer higher individuals who more or less stand apart; and if, says Nietzsche, we make this reality over into a morality we have as the result that the average are of more value than the exceptions—something against which he protests with the whole energy of his nature, declaring, "Against formulating reality into a morality I rebel."[12] Hence a remark showing again how little nature

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and natural tendencies are a norm to him: "I find the 'cruelty of nature,' of which so much is said, in another place: she is cruel to her fortunate children (Glückskinder), she spares and protects *les humbles*."[13]

How little Nietzsche's ideal was one of mere power (of any and every kind), I now proceed to show by a number of citations—all taken from his middle and later period, when the doctrine of the will to power was taking shape in his mind. We still, he says, fall on our knees before force after the old slave-fashion, but if we ask how far force deserves to be revered we can only answer, to the extent reason blends with it—we must ask how far it is ruled by something higher and serves it as its instrument and means.[14] You stronger and haughty minds, he exclaims, grant us only one thing: lay no new burdens on us, but take some of our burdens on yourselves, as becomes the stronger.[15] He indicates plainly enough that tyrants of the ordinary sort are odious to him—whether in the political or intellectual realm.[16] He calls it one of the limitations of great men that they are too apt to make the lesser kind stupid.[17] We should not seek to possess men, but things; authority in order to command others is not desirable.[18] He is against the tyranny of even true opinions—as if they alone should exist![19] It is the people with "absolute truth" who burn Jews and heretics and good books, and root out entire higher cultures, as in Peru and Mexico—fanatical love of power leading them on.[20] The same thing leads men of to-day to do all kinds of shady things to get rich.[21] "Often slime sits on the throne and the throne on the slime."[22] Mistaken instincts for power, too, are behind the philosopher's will for a system—really a will, Nietzsche thinks, to make one's self more stupid than one is, "stronger, simpler, more commanding, rawer, more tyrannical."[23] Will to power lies behind religious domination: priests became the ruling class in later Israel, Israel itself, through Christianity, has become a ruling influence in our Western world—this domination was and is objectionable to Nietzsche.[24] The people, *i.e.*, the mass, are

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coming to power in modern states—Nietzsche laments the tendency.[25] Occasionally violent men take advantage of popular disorders to put themselves and their arbitrary will through; but the nobility which he wishes to see will be enemies both to the lustful populace and to these upstarts (Gewalt-Herren).[26] Of the Germany of to-day, he remarks, "It costs dear to come to power: power makes stupid (verdummt),"[27] he means that the interests of culture suffer with this preoccupation with external matters. Again, "Can one interest himself in the German Empire? Where is the *new thought?* . . . To rule and *help the highest thought to victory*—that is the only thing that could interest me in Germany."[28] Of a certain statesman (Bismarck, presumably), he says, "Strong. Strong. Strong and mad! Not great!"[29] He has misgivings about the book, *Will to Power* he is preparing, wishing that it could be written in French, so as not to have the appearance of giving countenance to German imperial aspirations.[30] Indeed he becomes almost contemptuous: "Power is tiresome (langweilig)—witness the Empire."![31]

All this is not taken into account by those—and they are a host, all the way from college presidents down to penny-a-liners in the newspapers—who think that Nietzsche proclaims an indiscriminate "gospel of might," having particularly in mind might of the "wild beast" type;[32] and we shall have to proceed with a little care in connecting his ethical end as defined in a previous article with the will to power. In a way the matter was problematical to him. He once notes down [we have now six octavo volumes of these private memoranda published since his death], "Rule? Force my type on others? Horrible (grässlich)! Is not my happiness just in contemplating a variety of types? Problem."[33] Indeed, he writes to a friend about his proposed book, *Will to Power*, "I have not gone beyond tentatives, introductions, promises of all sorts. . . . It has been, all in all, a torture, and I have no more courage to think about it. In ten years I shall do better."[34] If Nietzsche had lived even half that length

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of time, he might have produced something that would have made his views quite clear; as it is, however, we have ourselves to do the work of clarification to a greater or less extent—*i.e.*, supposing that the views are really consistent which, of course, may not be the case.

II.

As nearly as I can make out, the essential logic of his procedure was something like this:—The world at bottom is a complex of forces, and each pushes itself as far as it can—each on its inner side is a will to power. There is no law over these forces restraining them, but they are held in check by one another. Sometimes order may come from a simple balancing. But some may be stronger than others: there are different levels or gradations of force. A higher level may make the lower subject. What we call the organic world masters thus to a certain extent the inorganic, and the higher organic the lower. Force becomes more sublimated, spiritual. Man, the weakest thing in nature from one point to view, controls through intelligence.[35] He is after power, like every other energy in nature, but his means are peculiar. The single individual's weakness, too, leads him to combine with others, groups arise, and morality, the law of group-life, becomes as vital to him as intelligence—it is a means to power, just as intelligence is.[36] And group-life once attained, and the existence of the species becoming tolerably secure, the underlying urge of force may push to higher levels still and use the group-life itself as a means. It is the peculiar mark of Nietzsche's ethical thinking that he conceives an end for man beyond society. Society is a form of human existence, but not the highest form. Great individuals spring from society, but they rise above it—the social individual is not the highest type.[37] The lonely, the solitary, those whose occupations and interests are beyond the sympathy and perhaps even the comprehension of most of us, who are half like Epicurean gods apart from the world and move like stars in orbits of their own—they are the real end of humanity,

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they alone are properly ends in themselves, mankind existing for them, not they for mankind, save as from afar they shine upon us, and lift our hearts. Yet the driving force of the whole process from humblest plant to possible superman is will to power, will not to be, but to be more, each level putting itself on top of what lies beneath it, and being a new level only as it does so—so that if the plant had not had a will to dominate, it would never have emerged from the lower inorganic realm, if the animal had not had the will to dominate, it would never have differentiated itself from the plant, if man had not had the will to dominate and put plants and animals under his feet, he would never have become what he distinctively is, and if somewhere among men now, there is not the will to dominate over other men, to use the rank and file as means, instruments to ends beyond them, there can never be a higher order of mankind or superman. In other words, will to power is the driving force in the whole scheme of cosmic evolution and if there is to be any further advance, will to power must still make the inner impulsion.

If then life and the highest possible ascent of life is Neitzsche's moral aim (as indicated in my earlier article), will to power turns out to be vitally related to it—is indeed but a closer and more interior determination or definition of it. One might even say that it is will to power itself that sets the moral aim which Nietzsche proposes—only instead of working blindly and instinctively, it now deliberately formulates what it desires. Nietzsche once says, "Life is to me instinct for growth, for permanence, for the amassing of force, for power."[38] It is true that the feeling of power and for power may be slight in some, it may be almost non-existent in expiring forms of life; for all that, it is to Nietzsche the essence of the living process, and only as it increases, can there be more and higher life—in a word, if life and the highest reach of life make the aim, here is the pulse of the machine, and this it is that must be quickened.

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With a general view like this, the following becomes quite comprehensible:

"Formula of our happiness: a Yes, a No, a straight line, a mark to aim at (Ziel).

"What is good? All that increases the feeling of power, the will to power, power itself in man.

"What is bad (schlecht)? All that comes from weakness.

"What is happiness? The feeling that power is *growing*—that an obstacle is overcome.

"*Not* contentment, but more power; *not* peace, but war; *not* virtue, but ability (Tüchtigkeit)—virtue in the Renaissance style, virtù, virtue free from moralic acid." [39]

But while power is the end,[40] and but a concrete inner rendering of life itself, it is plainly power on the human level and of the human sort that Nietzsche has in mind—not power of any and every description. He does not set up as a standard the power of physical nature, or that of tyrants, or of priests or of the mass or of an empire, but power such as essentially belongs to the evolution of the human type—the final ideal being the full and perfect efflorescence of that type, the domination in the world of men and things of *just that*. If mere abstract power were the ideal, then since the brute forces of the universe may sometime get the better of life, that would be an ideal consummation; or, since the weak by combination may (and actually do in our modern democratic world) make themselves masters of the strong, then that is an end to be desired—any chance force or set of forces that happened to get on top at any time would represent the desired end. Indeed, if any *de facto* might made right, a question would arise as to the sense of making power an ideal at all, since it effectuates itself anyway—there being no situation in the world that is not statable as the result of the action and interaction of forces, in which some get the upper hand. But Nietzsche is not *bête*, and so far as he speaks of power as a desirable end for man he means just a power that does not necessarily effectuate itself, that has to be striven for and may or may

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not be obtained—it is emphatically a power that requires a will to power.

Even so, however, it may be said that power is a vague conception—too much so to give us any definite guidance in acting or judging of things. Let us see then what becomes of it in Nietzsche's hands—how he uses it.

III.

In the first place we notice that in the back-ground of his mind there is a certain sense, for all said and done, of the insecurity of life. After all mankind is more or less to him, as it was to Mathew Arnold, "a feeble wavering line." Life is not an assured gift, it rests on effort, toil, on the *will* to live—so that there is sense in making it an ideal, and in exalting ideals of power. Schopenhauer and the Buddhists actually propose to weaken the will to live. Certain types of Christianity practically tend the same way. Nietzsche feels that there is need of a fortifying doctrine. It is perhaps something to set life and power in all their vagueness as an end, as against *non-life*.

But more than this, his construing life as will to power enables him to judge between different types of life—those animated by less will to power ranking lower than those with full will to power: the descending and ascending lines of life are not of equal value. Indeed, on a general basis of this sort he conceives of the possibility of a properly scientific ethics arising, which should stand to past morals something as chemistry does to alchemy. Knowledge being scientific, as it can apply number and measure, an attempt is in order to see if a scientific order of values can not be built "on a number and measure scale of force," ascent in the scale signifying increase of value, descent diminution of value—all other estimations being prejudices, naïvetes, misunderstandings. He is aware that we cannot carry out the program as yet, that we must have recourse to physiology and medicine, to sociology and psychology, and that these sciences are not yet developed enough to give us with confidence the data we need.[41]

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All the same he throws out the general idea, and we find him following it in a rough approximate way in appraising not only differing types of men, but even differing moralities. For example:

(1) He rates great individuals differently from the ordinary social man, because they can more or less stand alone, have greater strength. Gregarious creatures are, as a rule, individually weak—that is why they combine; they crave power (as everything in the world does), but they get it in this way. In packs, herds, communities they are strong. But the leaders of the flock and individuals of the solitary type (like the lion and the eagle among animals), have resources in themselves—they have strength and to spare, can give help instead of needing it, or can prey on others and take them captive. As the stronger, they stand higher in Nietzsche's scale of value. Of course, no independence is absolute and Nietzsche is well aware of it; still beings are graded in his eyes according as they are more or less capable of it.[42]

(2) Moralities rank differently according as they spring from strength or weakness (for, aside from the morality involved in any kind of social existence, there are, according to Nietzsche, special moralities, bound up with the conditions of existence of particular peoples or social classes). He finds, for instance, a difference of tone, of emphasis, even of special valuations, in the moralities of the ruler and subject classes in the past (this the result of an analysis of data, acquaintance with which I must here presuppose). Why is the "master-morality" higher than the "slave-morality"? Because it comes from strength, formulates the conditions of life of the stronger class. The sense of overflowing power runs through it, while the slave-morality is correlated with weakness and the sense of need. If we look through the circle of virtues and excellences put in the first rank by each class—on the one hand, independence, proud self-respect, honor only for equals with at best condescending care or pity for the rest, masterfulness and daring of all sorts, contempt of

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danger, and also capacity for *otium*, taste for useless knowledge and accomplishments; on the other hand, helpfulness, sympathy, modesty, obedience, patience, humility, industry, prudence, invention, and whatever intellectual virtues serve the practical needs of life—we see that the one set of virtues and excellences is as naturally the idealism of an aristocratic class, full of the pride and abounding vigor of life, as the other is that of the hard-working, much-suffering masses of men. And the aristocratic morality ranks higher just because it comes from the higher, *i. e.*, stronger, type of men.

Nietzsche comments on a matter that is of interest in this connection and it may be well to take it up at this point. How shall we explain the historical antagonism of morality to will to power? Perhaps there is no more prevalent notion than that of a contrast between power and right. Now Nietzsche admits a certain relative justification for the common attitude. Power and the will to it *are* sometimes dangerous (particularly certain crude forms of it), and have to be held in check.[43] And yet he finds a certain speciousness in the antagonism when stated broadly, as it usually is. "Morality" is not so much antithetical to will to power, as a concealed form of it—that is, behind it lies the will to power of the mass, or old-time subject class. Considering itself as the equivalent of the group (it does of course compose the majority of it) the mass demands (and commands—this an essential feature in any morality) that all individuals shall serve the group, shall be good according to its understanding of the term and avoid evil as it conceives it, that none shall have separate standards, personal aims or will to power on their own account—it fears any one who takes things into his own hands and opposes him (loving naturally those who love it, and do its will). But this is only saying that the mass wishes to *prevail* (have supreme power), prevail with its morality and by its morality—for it is not now a question of physical force. And how far the instincts and desires of the mass have prevailed is indicated in the very fact

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that makes the starting point of this paragraph—they have actually succeeded in identifying morality with *their* morality and have made the idea go into current thought and speech that morality and power are antithetical things. But the power to which "morality" *is* antithetical is only the power of strong men who make their own laws of conduct (persons proper); morality itself is will to power—only will of the weaker sort of men and one which resorts to deception (of others and self) as weaker species are apt to do. In other words, the historical antagonism of morality to will to power roots itself in the antagonism of the mass to higher individuals, of the average to the exceptions, of the weak to the strong. Occasionally Nietzsche turns the tables on morality, saying that it is itself unmoral—meaning according to its own specious antithesis of morality to will to power; for it is itself an assertion of will to power.[44]

In fact, he finds will to power in varying degrees practically everywhere—though it assumes different forms and sometimes hides itself. It often exists in the sickly as truly as in the well—none can surpass, for instance, a feeble, sickly woman in refined ways of ruling, oppressing, tyrannizing.[45] Indeed, so many and such varying wills to power are described by Nietzsche that one is sometimes led to ask whether power and will to power make any kind of a standard to him. As he reads history and particularly modern history, the instinct for power of the mass has actually triumphed over great individuals (or those who might have been such)—a result so deplorable and pitiful in his eyes that one might parody his state of mind by saying that his appeal is to "come to the help of the mighty *against the weak*"!—and yet a result, to which as a triumph of power his own principles would seem to oblige him to assent. Our perplexity and confusion are only resolved (so far as they *are* resolved[46]) as we remember that there are different grades or levels of power to his mind and above all that he is always thinking of the individual specimen of humanity, the *type*. The mass,

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by combining, undoubtedly make themselves stronger than the "strong," but they are none the less poorer, feebler specimens of our kind. [47]

(3) Two or three further instances of Nietzsche's fixing rank according to power may be cited. The morality of men like Heraclitus and Plato is something very different from the morality of subjection such as is practiced by the ordinary members of society. It is the morality of those who would naturally have *ruled* in society, but who in a time of change and dissolution can only rule themselves. [48] The ranking in this case is indeed hardly different from that which most of us would instinctively make. Our ordinary judgments, too, of vanity, hypocrisy and mere prudence seem to rest on the basis of a standard like Nietzsche's. Why do we look down on a vain person? Because he wants to please, to be what others would like, in this showing a lack of original creative force—he is "empty." We judge an unreal, hypocritical person in the same way—the contemptible thing about him is his exceeding deference to the standards of others. So the typically prudent person is not set on high, because something is lacking in him—the abounding energy that sometimes makes one headlong, frank, defiant to his cost. On the other hand, love and unselfishness suggest one who overflows in power, and the very counting of costs that ranks low, when it is a dictate of prudence, wins an altogether different estimation when a great love, e.g., love for the community, lies back of it. [49]

Nietzsche appears to have had in mind a systematic classification of men and things according to the following *schema*:

> "What springs from strength.
> What springs from weakness.
> And whence have we sprung?
> The great choice."

Though he never accomplished the classification, it has been attempted in a most interesting way by Professor

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Richter who makes a survey and hypothetical valuation of varying religions, philosophies, moralities, types of art, personalities and cultures, from this point of view.[50]

IV.

But now let us attend a little more closely to what Nietzsche means by power. He makes no formal definition of it,[51] and does not attempt to say what is its final metaphysical nature.[52] He appears to take the concept simply as he finds it in common use—the essential element being ascendency, effectual superiority of some sort. By giving it an inner turn, taking it practically as *will* to power, he indicates that it is not anything static that he has in mind, but a principle of movement and progress (or at least change). The implication is that there is no result that does not tend to be transcended, perhaps destroyed. "Whatever I create and however much I love it, I have soon to be hostile to it" says Zarathustra. Power, at least will to power, is eternally avid.[53] Hence successive grades or levels of power, a Rangordnung. It is from inattention to this that Nietzsche is much misconceived—as if "power" must always be on a physical level! Emerson speaks of a "scale of powers,"[54] Nietzsche's idea is the same. Emerson advances the paradoxical idea that it is "not talent but sensibility which is the best", and Nietzsche finds power in things which are often contrasted with it. But the higher sorts of power, though so different from the lower that they seem antithetical and a part of another order of reality, are really extensions, refinements, spiritualizations of the lower sorts, and have the same essential character.[55] They too give predominance, ascendency, though, in other ways, by different means. Indeed, it would seem to go along with the general view that the refinements, spiritualizations of power should be just intensifications of it—since only on this basis can their ascendency over the grosser forms be explained.[56]

Nietzsche gives us no set scale of powers, and I can only offer more or less vague and scattering illustrations of the

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general idea that appears to be in his mind. First, he recognizes power on the physical or rather animal level.[57] He does this so frankly that he has given great offence. Who has not heard of the "blond beast roving greedily after prey and victory," whom he is supposed to celebrate? Indeed, "blond beast," and other striking phrases like "beyond good and evil" and "superman" have become "catch-words"—a part of the stock in trade of journalists and others who wish to appear up-to-date and yet have scarcely an idea of what the phrases mean. As a matter of fact, the phrase "blond beast" occurs just twice, so far as I remember, in Nietzsche's sixteen volumed works—the important passage being §11 of the First Essay of *The Genealogy of Morals*, the other, which puts the phrase in quotation marks, §2 of a chapter of the later *Twilight of the Idols*, entitled "The 'Improvers' of Mankind."[58] The connection in which the phrase stands in the principal passage is something like this:—Nietzsche is continuing his earlier discussions of the natural history of morals, in essentially the same spirit, I may say, as our English and American anthropologists and sociologists, though perhaps in a finer, more intimate, and certainly more venturesome way, and now is giving his view of the contrasted types of morality which conquering and subject classes naturally develop. By way of illustration he draws a more or less imaginative picture of the earliest Aryan races as they from time to time descended on the aboriginal inhabitants of Europe, and, with all manner of violence, reduced them to subjection.[59] Whether Hellenic, Roman, Germanic, Scandinavian, these marauding tribes were of a common fair or blond type (in this Nietzsche simply follows the prevailing anthropological view), to quote his words, "at the basis of all these superior races, the robber-animal is not to be mistaken, the splendid blond beast roving greedily after prey and victory." It is simply a pictorial, but perhaps for all that quite exact description of our Aryan forefathers. In the other passage,

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the superior (vornehme) Germans are spoken of as the finest examples of the "blond beast."

Undoubtedly Nietzsche in a certain sense "celebrates" these conquering Aryans. Many of us too are proud of our descent from them, though Nietzsche undermines our feeling somewhat by suggesting that the blood of most of us is probably much mixed. Relatively to those whom they conquered they were the more vigorous stock and had the higher promise of life—even supposing that the subjected populations were more industrious, more peaceful, more moral (in the sense in which morality stands for sympathy and mutual help). Overflowing vitality is the condition of all that is really excellent in Nietzsche's estimation. Not in lessening or depressing this, but only in refining and spiritualizing it is the way of progress. But it does not follow that those in whom vitality has risen to higher and finer forms shall make the "blond beast" (in his early form) their model and shall go back to marauding and killing as our fathers did. We may indeed do it on occasion, or something like it—modern European states are doing it in their colonial ventures, [60] though even so the work might be done in a finer and less bungling manner. But in general it is no more necessary that power shall always remain on the animal level than that a grown-up man shall always repeat the exuberances of his youth, and it is gratuitious to imagine that Neitzsche propose any such thing. All the same, this seems to be the ordinary interpretation of Nietzsche, and it is sometimes shared by those from whom one expects more discriminating judgments—professional scholars and philosophers. [61] Among the few who really get Nietzsche's point of view are Prof. Alois Riehl, Prof. Réné Berthelot and Prof. Frank Thilly. [62] While as against weakness, stagnation or degeneration, with whatever accompaniment of refined feelings and peaceful manners, the "blond beast," the primitive Aryan, was the better man and had more promise for the race, this is not true when the contrast is with a higher, more spiritual development of the same forces

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that were in him. Emerson speaks in the same spirit, when he says, "In politics and in trade, bruisers and pirates are of better promise than talkers and clerks"; and again, "In a good lord there must first be a good animal, at least to the extent of yielding the incomparable advantage of animal spirits."[63] Most valuations are relative, some things are better than other things (though still other things may be better than these)—and there is no need, nor is it correct, to attribute absolute valuations at this particular point to Nietzsche.[64] The extent to which Nietzsche attached finer and higher meanings to power than mere brute force will appear as I go on.

V.

First a word may be said as to what Nietzsche regards as the democratic misunderstanding of will to power, namely the identification of it with ambition, love of glory. Napoleon, Caesar, Alexander are often cited as instances—as if, says Nietzsche, just these men were not the despisers of glory.[65] Glory is, of course, honor in the eyes of others, it is distinctively a craving of the social man (*i.e.*, one who is not sufficient unto himself); the desire for it is akin to vanity and springs from weakness.[66] But it was not the notice of others that these men sought—power itself was what they were after and that is a reason why they rank so high. He also criticizes the view of Helvetius that one strives for power in order to get the pleasures that are at the command of the powerful[67]—this, I might say, as many of our wealthy (or becoming wealthy) class in America do now, enjoyments, luxuries, comfort being in the background of their mind. But this Nietzsche thinks is to confuse the strong man with enjoyment-seekers—what such an one really wishes is to put forth his power, not to eat sweets, have country houses, live softly and so on.[68] As Nietzsche conceives an aristocracy, even the idea of it is lacking in America.

Nor is Nietzsche's "strong man" a swashbuckler. That this is not what he means is implied in a remark he

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makes (perhaps unjustly) about present-day Germans. They think, he says, "that force must reveal itself in hardness and cruelty and then they subject themselves gladly and admiringly. . . . That there is force in mildness and quietness, they do not readily believe. They miss force in Goethe and think that Beethoven has more; and in this they err." [69] Again he says, "When one sits well on a horse he steals an enemy's courage and an onlooker's heart—why wilt thou still attack? Sit like a conquering one"! [70] Moreover, power by no means necessarily intimidates, he thinks, and when punishment is attempted with this sole end in view it is often a sign that real power is lacking—a sign of doubt of one's power. Indeed, Nietzsche's idea of a natural lord of men is often not of an oppressor at all, but of one who brings relief, benefit.[71] He is one "who can lead a cause, carry out a resolve, be loyal to an idea, hold fast a woman, punish and overthrow a rascal—a man who has his anger and his sword and to whom the weak and suffering and oppressed and even animals gladly turn and naturally belong." [72] His thought of the future is that the European masses who are now being mixed, averaged, democratized, will sooner or later *need* a strong man as they need their daily bread.[73] M. Emile Faguet, the French Academician, overlooks this side of the matter when he represents Nietzsche as teaching that the higher class are to hold down the mass and keep them at their tasks by force.[74] The summit of power, in his conception, is just in making that cruder sort of power unnecessary. If we use violence against another, we may of course subject him, but we do not get his heart—and therefore our *power* over him is so far incomplete.[75] It reminds one of what Lorenzo de'Medici said after foiling the Pitti conspiracy against his house, "He only knows how to conquer, who knows how to forgive." [76]

Indeed, as we have already seen, power takes to Nietzsche's mind a new turn in the human world in general. Man passes as the strongest animal—but why? Because,

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Nietzsche answers, he is the cunningest. Intelligence is power along the human line of evolution. In the progress of mankind, ever less physical force is necessary; as time goes on, we wisely let machines work, man becomes stronger and more spiritual.[77] Once in speaking of the greatest events and the greatest thoughts, he corrects himself: "but the greatest thoughts are the greatest events." [78] He even allows Zarathustra to say, "thoughts that come with the feet of doves rule the world," and he gives as an instance the thought of good and evil: Zarathustra had seen many lands and peoples and had found no greater power on earth than this category.[79] For what is thinking or knowing? At bottom and in its most commonplace form, it is to Nietzsche a kind of grasping of things to the end of *getting control* over them, making an idea and orderly scheme of them to the end of control—the senses, memory, all develop in this way: behind the whole process is the instinct for power. Philosophy (as distinguished from ordinary thinking) is simply a more sublimated expression of the same instinct; and it is because the philosopher wants the best conditions for expanding his force and reaching a maximum of power, that he renounces on occasion the delights of other men, such as home, children, family-ties, even verging towards ascetic ideas.[80] And the difference between the mere skeptic or critic or historian in philosophy and the constructive, creative thinkers is a difference in power. The former can think to the extent of doubting or analyzing or describing but are incapable of more, while the latter are capable and from the fullness and overflow of their energy take up creative tasks.[81] Equally with the robber, the barbarian and adventurer is the philosophic innovator after power, only it is the supreme kind of power not the lesser.[82] Nietzsche speaks of the calling of the philosopher as a kingly one; he cites Alcuin the Anglo-Saxon's definition of it, *prava corrigere et recta corroborare et sancta sublimare* (to correct what is wicked, to strengthen what is right, and to lift what is sacred on high).[83] There is something of the Caesar in the philosopher's nature—

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Nietzsche speaks of the "Caesarian trainer and strong man of culture"; and he thinks that the type of philosopher needed in the future will be bred in a caste accustomed to rule and will be its highest spiritualization.[84] For the function of the philosopher is pre-eminently to be a law-giver, not merely to define and name the valuations that are,[85] but to say what ought to be, to give an end and an aim to mankind, to turn what is and was into means, instruments, hammer for forging the future—his knowing is *creating*, his creating law-giving, his will to truth *will to power*.[86] Beyond the actual rulers concerned with the administration of government and in a state apart, is this highest man—a power above powers, determining the values and guiding the will of centuries.[87]

Nietzsche also speaks of power on the moral level. What is the difference between vulgar selfishness (which Nietzsche looks down on as much as anyone), and the love that looks beyond one's self and gives and bestows? It is, according to his view, that the selfish man requires all his energy for his own ends and has no surplus—he is really a needy kind of man who must take in all that he can and cannot afford to give out; while the other type overflows. Wherever there is power and to spare it must have an object on which to expend itself, either harming or blessing, and "love gives the highest feeling of power."[88] Sometimes this type of goodness is combined with greatness and then arises "English majesty" [The adjective is, I suppose, to distinguish it from strutting kinds found elsewhere]. It is something in which the highest pride bends fatherly and benignly to others and has no other idea than to rule and to guard at once—something lacking, Nietzsche remarks, "in our political *parvenus*."[89] There is even a kind of prodigality resulting from inner opulence. In this way aristocrats sometimes throw away their privileges and interest themselves for the people, the weak, the poor.[90] Hence too a noble hospitality. "There is a superior and dangerous kind of carelessness, . . . that of the self-assured and over-rich soul, which has never con-

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cerned itself about friends and only knows hospitality and how to practice it—heart and house open for every one who will come in, whether beggar or cripple or king. It is the genuine courtesy (Leutseligkeit): one who has it possesses a hundred 'friends,' but probably no friend."[91] In a similar way grace, or merciful indulgence, is the virtue, the privilege, of the strong—and can only be exercised by them. Nietzsche can even imagine a society so strong and so self-assured that it could let wrongdoers go unpunished[92]—something, I need not say, that does not hold for the societies of to-day.

Nietzsche sees power lying back of self-control. Why is it that some always follow immediate impulses? Because, he says in effect, they lack power to inhibit them.[93] They have the power *of* their impulses, but no surplus, nothing transcending. It is only the strong man with heaped-up force, who can say "no" to this and that wandering desire—who can rule them, give them their proper place and no more, and thus make a harmony, instead of a discord and contradiction, of his inner life. "Unfree will" is defined as defect in inhibitory power against stimuli;[94] with power comes free will (in the legitimate sense of that phrase). Libertinism, *laisser-aller*, is not power, but the antithesis of it: whether practiced by an individual in relation to his impulses, or by society in relation to the mass of its members, it is symptomatic of weakness and degeneration—strength is ever in rule, in organization.[95] The decadents of our or any time find their definition (in part) as those who cannot control themselves—this is the meaning of their irritability: all predominantly irritable people belong to the descending line of life—they are impulse merely, have no surplus strength.[96] This holds of the sexual as of other instincts—one who does not have them under control is not a strong man; the artist, Nietzsche holds, is a temperate, often a chaste man, his dominating instinct making him so.[97] Once he speaks of the necessity on occasion of fighting, even knocking out of their senses, impulses which are not on

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that account however to be called evil, but are only to be downed, made subservient—for power over, not destruction of, the passions is the true aim.[98] The body does best itself when it is best ruled[99]—and the underlying truth is a general one: power is organized and attains its maximum of efficiency and happiness, when higher stronger power directs it. What Nietzsche calls Züchtung (training, discipline) he ranks high for this reason: it increases strength—untrained men being weak, wasteful, inconstant.[100] Nietzsche even sees the higher meaning of asceticism from this point of view, however hostile he is to it in other ways.[101] Why did a mediaeval baron on occasion bow before a saint—not merely one of the Franciscan type, but the sterner sort as well, above all one of the sterner sort? Because, Nietzsche answers, however strong his own will to power, he recognized in the saint a kindred will to power, though taking a different turn.[102] The baron conquered others, the saint conquered himself, laid a strong hand on the natural impulses welling up in him—and the baron might well ask from his own experience, which was the greater victory and showed the greater power? Nietzsche says that the feeling of power has hitherto reached its highest point in continent priests and hermits (for example, among the Brahmans).[103] Further, it is possible not only to control our "natural impulses," we can triumph over our suffering and pain. Nietzsche uses the word "tyrannize" on one occasion. A measure of the power of the will is how much opposition, pain, torture it can bear and turn into account.[104] It is one of the characteristic marks of the most spiritual, *i.e.*, strongest, men, the great individuals on whom Nietzsche sets his heart, that they practice hardness against themselves: "it is their pleasure to subdue themselves, asceticism becomes nature, need, instinct with them."

Indeed, virtue in general finds its definition with Nietzsche in terms of strength—and after all this is only returning to ancient usage. Virtue for him is literally *virtus*, ἀρετή, Italian Renaissance *virtù*, *i.e.*, strong excellence

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of some sort, manly superiority. Underlying it is will, courage—its opposite is laziness, weakness, fear. Many, he says, do not put through their best right, because a right is a sort of power and they are too lazy or too afraid to exercise power—decorating then their fault perhaps by talking of forbearance and patience.[106] Power, as Nietzsche uses the term, includes will to power, and the trouble with many is that they don't will—they long, they desire, they are ambitious, but they do not will.[107] Willing is saying, So let it be: it is a kind of commanding.[108] Hence Zarathustra's warning, "Do what you will, but first be such as can will."[109] It is, in Nietzsche's eyes, a trouble with the Germans, that they know how to obey, but not to command, though in exceptional circumstances they may do it.[110] In general the greatest danger for man is not in the qualities that belong to the robber-animal, but in sickliness, weakness.[111] This makes virtue proper impossible. Vice is the self-indulgence of the weak, their inability to inhibit impulse.[112] I do not mean that Nietzsche counts as virtue everything that goes by that name—he will first have proved that so-called "virtues" are virtue, *i.e.*, come from strength,[113] and in effect suggests a re-estimation of the "virtues," according as their origin is in strength or weakness. So vices are judged as manifestations of weakness. It is even possible that what is vice for a weak man should be a permissible liberty to another.

The intimate connection of virtue with power Nietzsche implies in another connection. It is, he says, "in order that the manliest men should rule"; indeed, "there is no sorer misfortune in all human destiny than when the mighty of the earth are not also the first men."[114] And yet, he adds (and this is the point now), when the highest kind of men are not in power, there is something lacking in the higher men themselves. Not only should the best rule, but the best will rule, and where there is a different idea, the best are wanting[115]—*i.e.*, it enters into the idea of the best that they take the responsibility their nature entails

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on them; if they do not, they are not the best. At this point we see again how impossible it is to hold that in Nietzsche's view any kind of might makes right. If we are occasionally tried by passages that look this way[116] we must remember that to him there are different levels of power,[117] that one level may be higher than another and yet be lower than one higher still, and that the highest kind of power alone had his unmixed admiration. In any case the fact that men are "the mighty of the earth" nowise decides the question of their worth. Time and again he speaks of the degeneration or inadequacy of matter-of-fact rulers and ruling classes.[118] I have already indicated his view of the German Empire. Even in Napoleon, a far greater man in his estimation than any German of the political order, he saw defects—Napoleon was compromised by the means he had to use.[119] Of certain Roman Emperors he says: "without them and the [degenerate] Roman society [of that time], Christianity would not have come to power. . . . When Nero and Caracalla sat on the throne, the paradox arose that the lowest man was worth more than the man on top."[120] And something of this sort may always happen. Now the corrupt ruling classes are spoiling the image of the ruler in the minds of men, and many want no ruler.[121] "Often slime sits on the throne, and the throne on slime."[122] All the same, the failure of previous aristocracies, temporal and spiritual, proves nothing against the necessity of a new aristocracy.[123] And when the best come once more, the ἄριστοι, best in body, mind and soul, they will rule again. And that Nietzsche has an *ideal* in mind and does not bow down before brutal actuality now any more than when he wrote "On the Use and Harm of History for Life" in 1873[124] is shown in no way more clearly than by the fact that the supreme specimens of power to which his faith and longing went out, do not exist now (though power of some description rules the world now as truly as ever), but belong to the future, the function of present humanity being above all to make their advent possible.

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We may accept Nietzsche's moral aim and his practical identification of it with will to power, or we may not: it is a matter for our own critical judgment and choice. I have only sought to make his views as clear as their somewhat uncertain nature would allow. And perhaps I should append his own remark that it is part of the humanity of a teacher to warn his pupils against him.[125]

VI.

If a name is desired for Nietzsche's general ethical view, I know of none better than one used occasionally by Prof. Simmel: Personalism.[126] Utilitarianism on a pleasure and pain basis, no matter how universalistically conceived, Nietzsche distinctly rejects. "Egoism" is misleading; the egoism of the mass of men is no ideal to him, and that of the degenerate sickens, "stinkt."[127] "Individualism" is equally objectionable. Nietzsche conducts a polemic against individualism: he does not think that each and every man is important on his own account, that all have equal rights, that progress consists in making individuals as free as possible from social control, that each should live out his own life and pursue happiness in his own way.[128] An ideal like this verges toward anarchy, and Nietzsche is not a friend of anarchy. He thinks that some people are more important than others, that, as Prof. Karl Pearson has recently put it, "one able leader, one inspirer or controller of men is worth to the race thousands of every day workers,"[129] or, in Heraclitus's language, that, "one man is equal to ten thousand, if he be the best." In other words, there are gradations of rank among men, and it is a caste society that makes his ideal—"my philosophy is directed to a Rangordnung (order of rank), not to an individualistic morality."[130] But "Personalism," though like any general term it lacks complete definiteness, comes nearer to describing his thought than any other single word I know of. For to Nietzsche persons are the summit of human evolution, and the creation or furthering of them

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is the highest end which men can now propose to themselves —persons being those who direct themselves and make their own law, the strong, complete final specimens of our kind who naturally rule the rest of mankind, or, if they do not rule, are a kind of semi-divine race above them. Most men are not persons and run great danger if they try to be.[131] A full development of Nietzsche's idea of persons would require a separate article.

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[1] Cf. Prof. R. Richter, *Friedrich Nietzsche, sein Leben und sein Werk*, 2d. ed. p. 271 (the larger interpretation comes in Nietzsche's closing period—primarily the doctrine was a psychological one).

[2] Cf., for example, *Richard Wagner in Bayreuth*, §11 ("who of you is ready to renounce power, knowing and feeling that power is böse"?); §8 (reflections on Wagner's own early temptation to seek for "power and glory"); *Human, All-too-Human*, §588 ("we hate the presumption of the great man not in feeling his power but because he wants to feel it only in injuring others, domineering over them and seeing how far they will stand it"); *ibid.*, §261 (on the pride and tyrannical tendencies of the early Greek philosophers).

[3] N. Awxentieff follows a similar order, expounding first the doctrine of will to power and then the theory of "natural" morality (*Kultur-Ethisches Ideal Nietzsche's*, see particularly pp. 117–138.)

[4] *E.g.*, Prof. A. S. Pringle-Pattison, *Man's Place in the Cosmos* (2d. ed.), pp. 261–2. Nietzsche's sister remarks in this connection on an incident of a different character, namely, his seeing a marching regiment during the Franco-Prussian war in 1870 and the exhilarating impression it made: "I felt," said Nietzsche in commenting on it, "that the strongest and highest will to life does not come to expression in a miserable struggle for existence, but rather as a will for combat, a will for power and supremacy" (*Werke*, Pock. ed., IX, xi).

[5] Letter to von Gersdorff, 7 April, 1866 (*Briefe*, I, pp. 25–26).

[6] *Beyond Good and Evil*, §9. It is true that a different idea of nature (as having a kind of method after all) appears in §188; cf. the early suggestion that an ethics might be developed in harmony with the Darwinian interpretation of Nature, *David Strauss, the Confessor and Writer*, §7. To what extent Nietzsche's positive ethics is a development along Darwinian lines is a disputable and delicate question; for instance, Nietzsche comes to doubt whether natural selection really favors the strong and not rather the weak (combined), cf. *Will to Power*, §§401, 685, 864. In quite another way the highest type of man is once spoken of as a copy of nature, namely in the prodigality with which he overflows, exercising immense reason in details, but prodigal (verschwendend) as a whole, and indifferent to consequences, *Werke*, XIV, 335, §178, cf. *Twilight of the Idols*, ix, §44.

[7] *Will to Power*, §49.

[8] *Ibid.*, §70.

[9] As to Darwin, cf. *ibid.*, §647.

[10] *Ibid.*, §70.

[11] *Will to Power*, §71.

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[12] *Ibid.*, §685.

[13] *Ibid.*, §685.

[14] *Dawn of Day*, §548.

[15] *Ibid.*, §514, cf. *Human, All-too-Human*, §158.

[16] *Dawn of Day*, §§199, 320.

[17] *Will to Power*, §875, cf. *Human, All-too-Human*, §260.

[18] *Werke*, XII, 129–130, §249.

[19] *Dawn of Day*, §507.

[20] *Ibid.*, §204.

[21] *Ibid.*, §204; cf. Emerson of Americans, "We are great by exclusion, grasping and egotism" ("Success" in *Society and Solitude*).

[22] *Thus spake Zarathustra*, I, xi.

[23] *Werke*, XIV, 353, §216.

[24] Cf. *Dawn of Day*, §205, *The Antichristian*, §27.

[25] Cf. *Zarathustra*, III, xii, §11; IV, xiii, §3 (the "Pöbel-mischmasch" are the "Herren von Heute"); *Werke*, XIV, 218, §440 (the lower *victorious*—singular conflict of two principles of morality).

[26] *Zarathustra*, III, xii, §11.

[27] *Twilight of the Idols*, viii, §1; cf. *Werke*, XIII, 350–1, §870.

[28] *Werke*, XIII, 352, §872; cf. XIV, 374, §251 (on the lowering effect of national egoism and hate).

[29] *Beyond Good and Evil*, §241.

[30] *Werke*, XIV, 420, §304.

[31] *Ibid.*, 244, §505.

[32] Cf. President J. G. Hibben's chapter on "The Gospel of Might" in *A Defence of Prejudice.*

[33] *Werke*, XII, 365, §706.

[34] Letter to Peter Gast, 13 Feb., 1887.

[35] Cf. *Will to Power*, §856.

[36] There may be more or less different moralities in different groups, but all alike have this as their hidden spring (*Zarathustra*, I, xv).

[37] See the illuminating remarks of Prof. Georg Simmel, *Schopenhauer und Nietzsche*, pp. 206–211.

[38] *The Antichristian*, §6.

[39] The *Antichristian*, §§1, 2. Other statements of Nietzsche are, "I estimate man according to the amount of power and the fullness of his will" (*Will to Power*, §382); "the strongest in body and soul are the best—ground principle for *Zarathustra*" (*Werke*, XII, 410); "I teach 'No' to all that weakens, exhausts, 'Yes' to all that strengthens, treasures up force, justifies the feeling of force" (*Will to Power*, §54); "to go on spinning the whole warp and woof of life, and to do it in such a way that the thread becomes ever stronger—that is the task" (*ibid.*, §674).

[40] Professor Riehl criticizes; "This monotonous power! More power! Power over what, we ask, and above all, power for what?" (*op. cit.*, p. 124). Would he say the same of "life"? Is it monotonous, save to the weary, to speak of life and more life? Would one ask of life, "for what"? Has it a purpose beyond itself and its own utmost development? Yet to Nietzsche power and will to it are the concrete and foundation meaning of life. I need not repeat that to Nietzsche power or will to power is the ultimate reality of things, so that it has no origin (*Will to Power*, §690), and can have no legitimation (cf.

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Werke, XI, 20, §114, XII, 207, §441, VII, Pocket ed. 485, §34, XIII, 198, §436).

[41] Cf. *Dawn of Day*, §103, *Will to Power*, §710.

[42] Cf. *Will to Power*, §886.

[43] *Will to Power*, §§720, 1025. Cf. Emerson to the effect that power is rarely found in the right state for an article of commerce, but oftener in the supersaturation or excess which makes it dangerous and destructive, and yet that it cannot be spared, and must be had in that form, and absorbents provided to take off its edge ("Power," in *Conduct of Life*).

[44] Cf. *Will to Power*, §§274, 401, 461, 720, 721, and Dr. Dolson's happy explanatory statement, as against Hollitscher's *Friedrich Nietzsche*, in the *Philosophical Review*, May, 1905, p. 373.

[45] *Genealogy of Morals*, III, §14.

[46] That Nietzsche himself felt the difficulty keenly is shown in *Will to Power*, §685, cf. *Werke*, XIV, 218, §440. Prof. F. C. S. Schiller, in commenting on a similar passage (*Will to Power*, §864), says, "The candor of the admission that the 'strong' are in reality the weaker, does not seem to leave much substance in Nietzsche's advocacy of the strong-man doctrine" (*Quarterly Review*, Jan., 1913, p. 157).

[47] As to the supreme significance of the individual specimen, see *Will to Power*, §§679–682, 713, and Professor Simmel's remarks, *op. cit.*, pp. 206–210.

[48] *Werke*, XI, 251, §221.

[49] *Werke*, XIII, 177–8, §406.

[50] *Op. cit.*, pp. 240–254.

[51] Richter remarks on the vagueness of the concept (*op. cit.*, p. 325); cf. also Fouillé, *Nietzsche et l'Immoralisme*, II, ch. 1, F. C. S. Schiller, *Quarterly Review*, Jan. 1913, p. 157 ("he never unambiguously explains what he means by 'strength' and seems to have no consistent notion of it"). But is not the vagueness of the concept partly owing to the fact that like all abstractions it gets its real meaning in concrete instances, and a more or less varied meaning as the instances differ?

[52] So far as he attempts an explanation of the world in terms of a will (or wills) to power, it is only, to use a happy expression of Professor Richter's, a metaphysics of the first degree; what the real and ultimate nature of power (and will to it) is, he leaves undetermined, evidently inclining to regard it as an unnecessary and irrelevant question.

[53] Not that the possibilities of progress are infinite. The total amount of force, energy or power (they are equivalent expressions to Nietzsche) in the world, however great, is limited, and the combinations it can make and the heights it can attain, however far beyond anything we know now, have their limits too. When then the end is reached, power can only turn on itself, dissolving the fabrics it has made and allowing the play to begin again (cf. *Will to Power*, §712, *Zarathustra*, III, xiii, §2, *Joyful Science*, §111). It is Heraclitus's Aeon, or the great "world-child Zeus," over again (cf. "Philosophy in the Tragic Period of the Greeks," §§7, 8).

[54] "Success," in *Society and Solitude*.

[55] As to the inner mechanics of the evolution, I am not able to make out a clear consistent view in Nietzsche. He sometimes speaks as if the higher powers seized on the lower and subjugated them, presumably then being

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independent existences themselves (the kinship between them only being that all are alike forms of power). Yet in general he uses the language of strict evolution; and perhaps even if there are eternally different kinds of power, this is not inconsistent with the higher being spiritualizations of the lower, rather than of a different substance.

[56] Mind, for instance, may have its ascendency over matter just because it is a spiritualization of the same energy that is in matter (this aside from the fact that matter is perhaps only itself definable ultimately in energetic terms).

[57] The predominance he recognizes on this level is always of body *and soul*; in speaking of the robber-type that lies at the basis of aristocratic societies, he says, "its predominance lay not primarily in physical force, but in force of soul—they were the more *complete* men" (*Beyond Good and Evil*, §257).

[58] I do not mean that the equivalent *idea* does not often occur; cf. *e.g.*, *Genealogy of Morals*, II, §17 ("a troop of blond robber-animals").

[59] Cf. the description of the memorials of the founding of states everywhere to be found: lands laid waste, towns destroyed, men made wild, consuming hatred between peoples, *Werke*, IX, 155.

[60] Cf. *Werke*, XIII, 326, §797.

[61] It can only be charitably said that even those "who know" cannot in this age of the world be expected to know everything, especially when the subject is so strange and multiform a thinker as Nietzsche. I give only a few instances of hasty judgment;—The superman "will strive to become like the 'blonde Bestie' of the old German forests, etc." (Prof. J. M. Warbeke, *Harvard Theological Review*, July, 1909, p. 373). Nietzsche's speculations, "if ever they came to be acted upon, would dissolve society as we understand it and bring us back to the 'dragons of the prime'" (Bennett Hume, *London Quarterly Review*, Oct., 1900, p. 338). "'We have now at last,' says Nietzsche, 'arrived at the brink of the period when wickedness shall prevail again, as it did in the good old heroic times when the strong man scalped, and stole, and lied, and cheated, and abducted'" (Oswald Crauford, *Nineteenth Century*, Oct., 1900, p. 604). "One must . . . get back once more to a primitive naturalness in which man is a magnificent blond beast, etc." (Prof. H. T. Peck, *Bookman*, Sept., 1898, p. 30). "Imagined as Nietzsche describes him, he [the Übermensch] reels back into the beast" (*Encyclopedia Britannica*, Art. Ethics). Prof. A. S. Pringle-Pattison speaks of this "wild beast theory of ethics," and finds Nietzsche's message to be "Back therefore to instinct, to 'the original text' of man" (*Man's Place in the Cosmos*, 2d ed., p. 317). Dr. C. C. Everett, *rarum nomen* among American philosophical writers, who indeed expresses his perfect agreement with Nietzsche's doctrine that the desire of power is the fundamental element of life, the only question being what kind of a self is asserted, finds Nietzsche's point of view practically "identical with that of a robber-baron of the middle ages" (*Essays Theological and Literary*, pp. 124–129). Mr. G. Lowes Dickinson in commenting on Nietzsche's view that power is the only thing that man will care to pursue, says that a man who has a right to such opinions would in our society become a great criminal, an active revolutionary, or an anarchist (*Justice and Liberty*, pp. 14–19)—a dictum the stranger, since Mr. Dickinson himself says later, "moral force in the end is the only force" (p. 217).

[62] Riehl says "The already proverbial 'blond beast' is not an ideal of Nietz-

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sche's, but his symbol for man as he was before culture was developed, the man of nature—his symbol for a pre-historic, pre-moral fact, and what appeared so attractive to him was the still unbroken force of nature there, not its bestiality" (*op. cit.*, p. 159). This statement only needs correction in so far as Nietzsche had in mind not primitive man in general, but the primitive Aryans. See Professor Berthelot's article, "Nietzsche," in the *Grande Encyclopédie* (a notable contrast to the meager, misleading article under the same heading in the *Encyclopedia Britannica*). Professor Thilly remarks, "he (Nietzsche) does not wish to bring back the 'blond beast' of early times" (*Popular Science Monthly*, Dec., 1905, p. 721).

[63] "Manners," in *Society and Solitude*. Of a similar temper is the remark (in connection with certain political agitations before our Civil War), "if it be only a question between the most civil and the most forcible, I lean to the last. Thus Hoosiers and Suckers are really better than the snivelling opposition. Their wrath is at least of a bold and manly sort."

[64] What in part misleads is the apparent gusto with which he describes the violence of the "blond beast" in the first of the two passages cited. So Prof. Heinrich Weinel charges Nietzsche with a thirst for blood, or at least with championing an impulse of that sort, because he portrays with astonishing and for the moment sympathetic penetration the psychology of the "pale criminal" (*Ibsen, Björnson, Nietzsche*, p. 183, cf. *Zarathustra*, I, vi). But Nietzsche almost always becomes a part (for the time) of that which he describes. As matter of fact, however, ordinary deeds of blood were as repulsive to him as to any one, and he counsels no uncertain methods in dealing with them. His views of civil punishment deserve special treatment.

[65] *Will to Power*, §751.

[66] Cf. *Beyond Good and Evil*, §261 (there is nothing harder for a really superior man to understand than vanity).

[67] *Will to Power*, §751.

[68] Cf. *Werke*, XIII, 177, §405 (happiness not the aim, but feeling of power). Happiness is an indeterminate conception anyway: "not 'happiness follows virtue,' but the strong man *fixes his happy state as virtue*" (*Will to Power*, §1026).

[69] *Werke*, XI, 363–4, §543. Cf. "I have found force where one does not look for it, in simple, mild and agreeable men without the slighest desire to rule"—the idea being that strong natures rule anyway, even though, as he says, they do not lift a finger and bury themselves during their lifetime in a garden.

[70] *Mixed Opinions and Sayings*, §354.

[71] *Beyond Good and Evil*, §199.

[72] *Ibid.*, §293.

[73] *Ibid.*, §242.

[74] *En lisant Nietzsche*, p. 344 ff. Faguet does however admit that the force is not brutality, or at least brutal manners, for he says that in Nietzsche's dream of a superhuman élite who will deliberately conquer and oppress he always makes beautiful manners enter (p. 307).

[75] *Will to Power*, §769.

[76] Roscoe's *Life of Lorenzo de'Medici*, p. 87. Cf. what Caesar said, in letting his enemies of Pompey's party go free after they had fallen into his hands:

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"I will conquer after a new fashion and fortify myself in the possession of the power I acquire, by generosity and mercy."

[77] *Will to Power*, §856, cf. §544; *The Antichristian*, §14; *Werke*, XIV, 97, §207.

[78] *Beyond Good and Evil*, §285.

[79] *Zarathustra*, II, xxii; I, xv.

[80] *Beyond Good and Evil*, §9; *Genealogy etc.*, III, §7.

[81] Cf. *Beyond Good and Evil*, §210, *Will to Power*, §972.

[82] *Will to Power*, §779.

[83] *Ibid.*, §977.

[84] *Ibid*, §978, cf. §960, and *Beyond Good and Evil*, §213.

[85] Cf. *Will to Power*, §422, as to the contrast with the purely scientific man who now is supreme; even Hegel made the philosopher subject to reality—he *prepares* for it, nothing more.

[86] *Will to Power*, §972, *Beyond Good and Evil*, §211.

[87] *Will to Power*, §§998–9. Somewhat in the same spirit Nietzsche ranks the church as an institution higher than the state, *i.e.* because it gives to the spiritual type of men the supreme place and has such confidence in the power of spirituality (Geistigkeit) that it renounces the use of rude force (*Joyful Science*, §358). So the rule exercised by heads of religious orders is spoken of as "the highest kind of ruling" (*Beyond Good and Evil*, §61). Cf. the striking picture of the Vornehmheit of the higher Catholic clergy, *Dawn of Day*, §60.

[88] *Genealogy etc.*, III, §18; *Will to Power*, §176.

[89] *Werke*, XI, 367, §554.

[90] *Will to Power*, §§935, 938; from another point of view conduct of this sort is in certain repects questionable, *Beyond Good and Evil*, §258.

[91] *Will to Power*, §939.

[92] *Genealogy etc.*, II, §10; *The Wanderer and his Shadow*, §34.

[93] *Twilight etc.*, viii, §6; *Will to Power*, §778; cf. August Dorner, Pessimismus, Nietzsche und Naturalismus.

[94] *Will to Power*, §1020.

[95] *Ibid.*, §122. Contrary to his usual custom, libertinism of the intellect is once spoken of without disparagement (*ibid.*, §120), but the thought is much the same as that underlying his use of the assassin motto, "Nothing is true, everything is permitted" (see my earlier article, p. 229).

[96] *Will to Power*, §737.

[97] *Ibid.*, §815, cf. *Werke*, XIV, 273, §58.

[98] *Dawn of Day*, §76; *Will to Power*, §933.

[99] *Werke*, XIV, 81, §161.

[100] *Will to Power*, §398.

[101] He devotes one of the Essays of *Genealogy of Morals* to the question, "What do Ascetic Ideals signify?"

[102] *Beyond Good and Evil*, §51.

[103] *Werke*, XI, 253, §229 (he remarks here that the reabsorption of the semen into the blood makes the strongest nourishment, and stimulates to an extraordinary degree the impulse for mastery, as also the craving for something contradictory and opposed on which the impulse may expend itself).

[104] *Dawn of Day*, §113; *Will to Power*, §382.

[105] *The Antichristian*, §57.

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[106] *The Wanderer etc.*, §251. A virtue is properly something strong and individual, characterizing above all the exceptional man, *Will to Power*, §317.

[107] Nietzsche sharply distinguishes between the two things, *Zarathustra*, I, xvii.

[108] *Beyond Good and Evil*, §19.

[109] *Zarathustra*, III, v, §3.

[110] *Dawn of Day*, §207; cf. the contemptuous references to the German sou with its involuntary bowing to titles of honor, orders, gracious looks from above etc., *Werke*, XIII, 344, §855. Prof. R. B. Perry's references in this connection to Nietzsche (*The Moral Economy*) show little acquaintance with him.

[111] *Genealogy etc.*, III, §14, cf. *Will to Power*, §98.

[112] Cf. *Werke*, XIV, 119, §251 (vice, along with sickliness, mental derangement and hypernervosity, a symptom of physiological decadence); *Will to Power*, §42 (crime, celibacy, alcoholism, pessimism, anarchism, libertinism, social and intellectual, classed along with vice); *ibid.*, §871 (men of power and will the antithesis of the vicious and unbridled).

[113] Cf. *Werke*, XIII, 209, §481.

[114] *Werke*, XIII, 347, §859; *Zarathustra*, IV, iii, §1.

[115] *Werke*, XIV, 65, §128; *Zarathustra*, III, xii, §21.

[116] I here cite some of them:—*Zarathustra*, III, xii, §4, "a right which thou canst seize upon, thou shalt not allow to be given thee." Of this it can only be said that Zarathustra is here speaking to his disciples, who are to take his ideals from the mountain-top down into the world, and that truth and moral commandments and the right to rule do not necessarily rest upon the general assent. *Will to Power*, §§735, 736, the tenor of which is that the weak and sickly may have their one moment of strength in a crime and that this may be a justification of their existence; also, that the really great in history have been criminals, breaking as they had need, with custom, conscience, duty — knowing the danger of it, yet willing the great end and therefore the means (cf. also *Werke*, XIV, 78, §153). As to the first point (cf. also *Werke*, XI, 250, §216), the view is not unlike Browning's in "The Statue and the Bust":

> "I hear your reproach—'But delay was best
> For their end was a crime.'—Oh, a crime will do
> As well, I reply, to serve for a test,
> As a virtue golden through and through."

(Cf. also Nietzsche's reference to Dostoiewsky's testimony as to the strong characters he met with in prison, *Will to Power*, §233.) In judging the second point it may not be aside the mark to say that "crime" is a legal category, that "conscience" is a psychological phenomenon not necessarily squaring with the truth of things, that "duty" means felt duty, which may not be what one really ought to do (supposing that there is an objective standard)—does not the Talmud even say that there is "a time to serve the Lord by breaking his commandments?" *Beyond Good and Evil*, §158, "To our strongest impulse, the tyrant within us, not only our reason subjects itself, but also our conscience"; also *Werke*, XIII, p. 209, §482, "No one is held in check by principles." These are primarily statements of fact and the truth of them is a question for psychologists. It may be said, however, that the last statement cannot possi-

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bly mean that man's thoughts, his general principles, may not influence his conduct, Nietzsche giving too many instances of a contrary view and indeed expressly saying, "You say that food, locality, air, society, change and determine you? Now, your thoughts do it still more, for these determine you towards this food, locality, air, society.—When you incorporate the thought of thoughts [he is here speaking of "eternal recurrence"], it will change you" (XII, 64, §117, cf. §118). What perhaps Nietzsche really had in mind was that "principles," taken abstractly and out of relation to the psychological driving forces, are ineffectual—somewhat as Fichte said, "man can only will what he loves" or as Professor Seeley spoke of the expulsive power of a new affection. *Will to Power*, §788, "to give back to the bösen man good conscience—has this been my involuntary concern? and indeed to the bösen man, so far as he is the *strong* man"? This is perhaps the most shocking passage, but it is not really the most perplexing to one acquainted with Nietzsche's thought and with his use of language. The "böse" man is one who is bent on injury or destruction and inspires fear; such men are necessary to the world's progress, in Nietzsche's estimation—both malevolent and benevolent impulses having their part to play. Nietzsche has no wish, however, to give good conscience to the *bad* (schlechten) man.

[117] Cf. *Werke*, XIV, 64, §125.

[118] Cf., for example, *Werke*, XIV, 340, §191, *Will to Power*, §874.

[119] Cf. *Werke*, XIV, 65, §129, *Will to Power*, §1026.

[120] *Will to Power*, §874.

[121] *Ibid.*, §750.

[122] *Zarathustra*, I, xi. At best princes today are in danger of becoming "solemn nothings" (*Dawn of Day*, §526).

[123] *Will to Power*, §953.

[124] See particularly §829 of that noteworthy essay.

[125] *Dawn of Day*, §447.

[126] Cf. *op. cit.*, p. 242. The title which Simmel specially chooses is, however, "Die Moral der Vornehmheit" ("Vornehmheit" covering the distinctive characteristics of the "Vornehmen" or superior class).

[127] Cf. my previous article, p. 240 and note 83.

[128] Cf. Zarathustra's language: "Callest thou thyself free? Thy ruling thought would I hear and not that thou hast escaped a yoke. Art thou one who *dare* escape a yoke? Many a man has cast aside his last worth, when he cast aside his servitude" (*Zarathustra*, I, xvii).

[129] In an address on Sir Francis Galton.

[130] *Will to Power*, §§854, 287; cf. the general attack on Individualism, *ibid.*, §§782–4, 859, and Simmel's thorough-going treatment of the subject, *op. cit.*, pp. 206–211.

[131] *Will to Power*, §§886; *Beyond Good* and *Evil*, §29 (independence something for the few), cf. §41.

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BOOK REVIEWS.

PROBLEMS OF CONDUCT: An Introductory Survey of Ethics. By Durant Drake, Assistant Professor of Ethics and Philosophy of Religion at Wesleyan University. Boston: Houghton-Mifflin Company, 1914. Pp. xiii, 455.

This is a book of the same general type as, but less thorough and technical than, the solid work on "Ethics" published by Professors Dewey and Tufts a number of years ago. In its four parts it covers a wide range of theoretical and practical problems, discussing "The Evolution of Morality" (pp. 9–72), "The Theory of Morality" (pp. 73–178), "Personal Morality" (pp. 179–304), and "Public Morality" (pp. 305–449). The book was written, so Professor Drake tells us, to meet the needs both of the college student who has the added guidance of an instructor, and of the general reader who has no such assistance. Only a small part of it is devoted to the consideration of fundamental theoretical questions; the student who shies at thinking things out to their bitter end—and he is not an unknown quantity in our colleges—will be glad to learn from the Preface that "the disputes and technical language of theorists have been throughout so far as possible avoided, and that the author's prayer "to be saved from academic abstractness and remoteness" has been answered. There can be no objection to such a treatment of the subject, which, the writer frankly confesses, must inevitably be superficial, if we steadily keep in mind that his chief aim is to give us not a system of ethics but a practical manual which shall "go straight to the real perplexities from which men suffer in deciding upon their conduct." The purpose of the study of ethics is for him, "primarily, to get light for the guidance of life"; he has sought "to impart a definite conception of relative values, to offer a thread for guidance through the labyrinth of moral problems, and to effect a heightened realization of the importance and the possibilities of right living." Judged by the task which Professor Drake has set himself—and it is a worthy task—this introductory survey must be characterized as clear and sensible. In our colleges, if anywhere, there ought to be a place for practical moral instruction that will help the young to think intelligently upon moral matters; and who could be better fitted to

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undertake this business than a man who devotes his efforts to the understanding of the meaning of the moral life?

It would, however, be a pity if the beginner should regard the brief sketch of the *theory* of morality presented in this book as the last word upon the subject and should be turned away from a deeper study by the seemingly impatient tone of the Preface which may perhaps give him a false idea of the value of the work that has been done in this field. Problems can be made to appear much simpler than they are, in a popular text, and discussions which have engaged the attention of great minds may impress the young student who is interested in the practical questions of the day as mere hair-splitting. Thus, for example, it will be easy for him, after reading Professor Drake's exposition of Kant's ethical philosophy, to agree that "as a theorist he is hopelessly inadequate," and he may wonder, after perusing the account of the happiness-theory, why anyone should ever have ventured to call it in question. A closer study of the works of the great German thinker would, I believe, show him that there is much more in the Kantian ethics than is offered in our author's presentation of it, and a critical examination of the pleasure-theory would convince him that the quarrel between schools is not mere academic moonshine. Still, with the added guidance of a competent instructor, as Professor Drake recommends, to raise doubts, suggest opposing views, conduct a discussion with the object of making the student think for himself, and to direct "the outside readings which should supplement this purposely brief and summary treatment," the student can avoid the danger of a paralyzing dogmatism, and the book cannot fail to be what alone it aims to be, that is, a useful and interesting introductory survey of ethics.

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JUVENILE COURTS AND PROBATION. By Bernard Flexner and Roger N. Baldwin. New York: The Century Company, 1914. Pp. 308.

THE JUVENILE COURT AND THE COMMUNITY. By Thomas D. Eliot. New York: The Macmillan Co., 1914. $1.25.

The text of the first of these volumes was prepared by Bernard Flexner of the Kentucky and the Chicago Bar, and Roger N. Baldwin, formerly Chief Probation Officer of the St. Louis Ju-

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venile Court, was endorsed and accepted as a report on Juvenile Courts and their Administration by a committee of the National Probation Association composed, in addition to the two authors, of the following persons:

Ben B. Lindsey, Judge of the Juvenile Court, Denver, Colorado.

Julian W. Mack, former Judge of the Chicago Juvenile Court.

Julia C. Lathrop, Chief of the Children's Bureau, Washington, D. C.

Homer Folks, President of the New York State Probation Commission.

Maude E. Miner, Secretary of the New York State Probation Association.

Edwin Mulready, Deputy Commissioner, Massachusetts Commission on Probation.

Arthur W. Towne, former Secretary of the New York State Probation Commission.

In order to appreciate the significance of the subject and of the volume attention may be called to the pertinent facts with reference to the attitude of the law towards offending or delinquent children. The earlier or common law regarded children under seven as incapable of crime, between seven and fourteen the presumption was against their being criminally capable, but this presumption could be overcome, and if it were so rebutted, the offending child was treated exactly as the adult offender, as to methods of arrest, of detention, trial, and punishment. So that there is on record the hanging of children of eight and ten years of age.[1] In general, too, the right of the father in the matter of custody and control of his children was absolute, not to be interfered with by the courts of law in the absence of such habits of drunkenness, blasphemy and indecency as would obviously prove demoralizing even to little children. The Courts of Equity, however, had a more extended jurisdiction and if in any way its jurisdiction would attach to the problems of any child, the decisions reached could be based on considerations of reason and of the child's well-being rather than on out-worn rules of strict law. The Chancellor who presided over the Court of Equity was the agent through whom was exercised the extraordinary jurisdiction of the King as *Parens Patriæ* over the orphans, the helpless, and those who under the ordinary rules

[1]See Blackstone, Commentaries, etc., Book IV, Chapter II.

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of law could not find adequate protection. Two obstacles, however, prevented the extended enjoyment of this beneficent jurisdiction.

(1) The theory that equity could obtain jurisdiction only when there was property—a theory somewhat justified by the great costliness of chancery procedure, and (2) the fact that the court was not equipped to enforce or administer decisions requiring long continued or delicate treatment of the difficult situation in which infant wards might find themselves. The widespread adoption of the juvenile court idea then has been based in the recognition of the ancient equity practice which has been enlarged to include offending children and so developed as to deal with complicated problems.

The subject-matter of this book deals then with the principles underlying the successful organization of an agency which, while vested with the compulsory power of the state, undertakes to deal constructively with individual cases of dependency, delinquency, neighborhood neglect, and all the other factors which lead in a modern community to the breakdown of family life.

The discussion covers such topics as (1) the method of selecting the judge, who should be assigned for periods not shorter than a year (p. 15), who should be a trained lawyer and a student of social problems, and at least in the girls' cases, a woman; (2) the methods of bringing children into court, which should be effected by summons rather than warrant, by persons in civilian's clothes and so as to express the fact that the court is a protective and not a penal agency; (3) the detention of children until a plan of treatment for their case can be worked out; (4) the classification of the wards of the court; (5) the investigation on which plans of treatment are based; (6) the organization of subsidiary agencies, such as a psychopathic clinic, upon which the court must rely; (7) the procedure in court; (8) the proper construction and arrangement of the court room so as to reduce the formality and facilitate privacy, and (9) the treatment of those children with whom it seems possible to deal without recourse to the final and radical measure—commitment to an institution.

The purpose of this treatment is reconstruction of the family and education of its members. And when there is evidence of a serious breakdown the agency through which constructive methods must be applied and educational devices worked out is the Probation Department of the court. The discussion therefore

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deals at length with the questions involved in the selection of the members of this department, their training, supervision, specialization of task, and the methods which may with some hope of success be employed by them in dealing with the wards of the court.

Perhaps as interesting a topic as any included in the discussion is that of the compilation of statistics in annual reports. To no other agency is given in fuller measure than to the juvenile court the opportunity to reveal for the enlightenment of the community the forces which are hostile to child-life and to child-wellbeing. If, however, this revelation is to be effectively made, it must be by intelligently compiled reports. Moreover, if the court is to profit by its own experience, indeed, if it is to do thorough and well-planned work, accurate and adequate reports of work done and consequences observed are essential. A very important service therefore which the writers have performed is the set of suggested forms to be considered in the organization of any new department or in raising the efficiency of any department now in existence. With the proposed forms for a model juvenile court law and for laws covering a number of related points, the volume will prove of very great service to the officials connected with juvenile courts already in operation and to those concerned with better standards of child care who wish to secure the establishment of a juvenile court on a sound basis in their community.

This is no slight undertaking because in the rapid adoption of the Juvenile Court laws, there has been great pressure to impose upon the court duties for which it was not in the nature of the case adapted. Especially has confusion arisen from the failure to distinguish between the problems of relief arising from simple poverty and the problems of discipline connected with drunkenness, immorality and other forms of degradation.

In the "Juvenile Court and the Community," Thomas D. Eliot points out that the failure to distinguish between dependent and neglected children, *i.e.*, between poverty and neglect on the one hand, and between neglected and delinquent children, *i.e.*, cases in which the parents are the true subjects of discipline and those in which the children should be placed under treatment, has necessarily given rise to confusion of function and consequent lack of efficiency in service and to retarded development. Dr. Eliot's conclusions are based on an extensive survey of the

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Juvenile Court Laws and the practice prevailing in connection with the administration of those laws.

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JESUS IN THE NINETEENTH CENTURY AND AFTER. By Heinrich Weinel, D.D., and Alban G. Widgery, M.A. Edinburgh: T. & T. Clark, 1914. Pp. x, 458.

Mr. Widgery has laid English readers under a debt of gratitude by rendering accessible to them Weinel's *Jesus im 19. Jahrhundert,* which has enjoyed great and well-merited popularity. But this volume is much more than a translation. Mr. Widgery has freely adapted Weinel's book, and has added much new matter concerning the views of Jesus taken by French, British, American and Italian thinkers. In its present form the book appears to have a threefold aim. It is predominantly historical and gives an account not only of the theories which have been held concerning the historical Jesus, but also of the solutions of contemporary problems which, in the eyes of different thinkers, Jesus would offer. But a more speculative aim is also involved. The authors have their own position to defend, and they work out the implications of this stand-point in connection with different aspects of life for which Jesus has significance. Lastly, a highly practical purpose inspires every paragraph, "the hope that these pages may help, however little, to present Jesus so that he may inspire man with loyalty toward himself." The book challenges comparison with Schweitzer's work *Von Reimarus zu Wrede,* a translation of which under the title "The Quest of the Historical Jesus" appeared in 1910. (On p. 410 Mr. Widgery gives the name of the book as "From Reimarus to Wrede." But, of course, this was not the title of the English translation. In the index the correct title is given, though the date of publication is wrongly stated.) Both works are primarily historical. Both trace the evolution of "the historical Jesus" in the 19th century. Both have a position of their own to promulgate and defend. But while Schweitzer considered only theologians, this book has regard also to poets, dramatists and litterateurs; and it has much to say of Jesus in the light of the social question. It is much more popular in style than Schweitzer's book: its appeal is not pri-

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marily to the student of theology. It sets forth in an untechnical way the history of the various views which have been taken of "the historical Jesus." Like the Christ of the Apocryphal Acts of John, he has appeared in different forms to different minds, and it is well that the popular mind should be aware of the fact which theology has long known, that "the historical Jesus," so far from being a clearly defined figure, is an almost hopelessly Protean form. Again, the book before us is more impartial than Schweitzer's. Yet to Schweitzer himself the authors are really unfair. They state his position unfairly and then dismiss it casually. When Schweitzer insists that the ethical teaching of Jesus is an *Interimsethik*, the important point is that the interval includes the whole period of the present dispensation. No doubt the matter as well as the form of the teaching was affected by a belief in the imminent consummation of the world, but the fact that it is an *Interimsethik* does not render it as a system of morality any the less ultimate and definitive. The interim is equivalent to the temporal order, and no ethical system has any validity without the bounds of the temporal order.

Both in philosophy and theology the authors maintain a position of their own. The philosophical position is vague and unsatisfactory: it is a type of Personal Idealism. Mr. Widgery (for the philosophical prolegomena due to him alone) contents himself with emphasizing the importance of "personality" and "experience." For Mr. Widgery it seems to be a sufficient justification of anything that we "experience" it. Now this may or may not be true, but we cannot know it to be true until Mr. Widgery tells us much more clearly than he has done what he means by "experience." On p. 342 religious experience is equated with faith. Both are sharply distinguished from thought: "they are attained through living." There seems to be a good deal of confusion here. It is surely clear that religious experience cannot be equated with faith. Much that is religious experience is not faith, and much that is faith is not religious experience. The circles of faith and religious experience intersect: neither falls wholly within the other. Further, the concept of faith, difficult enough already, becomes simply unintelligible if it be sharply cut off from thought. If we divide harshly life from thought (a separation in itself vicious), then the affinities of faith are with thought and not with life.

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Again, what precisely is meant by this: "Personality transcends the theoretical: it cannot be simply "known," it can only be 'experienced' personally." (p. 19) It means, I suppose, that personality reveals itself only in a one-one relationship, both terms of which are indefinable persons who are related not by knowledge but in experience. But this seems to me to need a great deal of explication, and I look forward to the book which Mr. Widgery has promised on the philosophy of religion. His philosophy of religion will be particularly interesting, if such statements as "God is not a proposition that one believes in, but a truth that one lives" (p. 394) really represent his mind. In any case the world badly needs more light from those who profess "Personalism" or "Personal Idealism."

The theological position of the authors is humanitarian. The Jesus whom they present is "the good and powerful man of Nazareth." He was not specifically different from other men: his spiritual nature was affected by sin (Luke xviii, 19). Though the authors admit that in the gospels two distinctly different series of expressions run side by side (in the one set Jesus is merely the prophet who points the way to God, in the other his disciples consider him to be, and he seems to be himself conscious of being, a new and complete revelation of God), yet throughout they oppose the doctrine of the Two Natures. At the same time they speak of Jesus as Saviour and Redeemer in terms of religious veneration which seem proper only if applied to Very God of Very God. Religious humanitarians who insist on the need of loyalty to a human Jesus often do not clearly see the dilemma which faces them. If they speak of a merely-man Jesus in the language of worship, they expose themselves to the charge of hagiolatry and idolatry. And it is, of course, no defence to point out, as Thieme has done, that such hagiolatry involves the worship of only one man. Mr. Widgery enters a very sound protest against the psychological theology of Dr. Sanday. But his arguments might be even stronger than they are. Dr. Sanday's defence of the divine nature in Jesus by relegating it to the subliminal consciousness is a counsel of despair. It is on a par with Spencer's reconciliation of philosophy and religion in the Unknowable. The subliminal consciousness is practically an unknown region, and we ought therefore to refrain from seeking explanations from it, and thus committing the fallacy of *obscurum per obscurius*. To refer the divine nature to the

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subliminal consciousness is to whittle it away to vanishing-point. For at this level neither judgment nor purpose are possible, and a divine nature which neither wills nor judges is not worth having. Dr. Sanday's view reduces in fact to a pure humanitarianism. On p. 145 it is interesting to note that the authors quote Mark x, 45 without remark, apparently disagreeing with Wellhausen's view that the second clause involves a μετάβασις εἰς ἄλλο γένος. On p. 371 it is asserted that for Hegel Jesus had value only as the incarnation of an idea. If by "idea" is meant what Hegel intended it to mean, then this is the same as saying in ordinary language that for Hegel Jesus was an ultimate reality. But the authors do not intend this. They wish to suggest that for Hegel Jesus had a significance which is purely speculative. Now it is clear that when Hegel considers Jesus in connection with the doctrine of the Trinity, the purely theoretic interest masters all others. He recasts the dogma of the Trinity in accordance with his threefold scheme of thesis, antithesis and synthesis, and involves as its three elements God in Himself, God in the otherness from Himself, and God in the return to Himself. It is quite true that, as Strauss showed, Hegel's interpretation of the doctrine of Incarnation would apply more exactly to humanity as a whole than to the historical Jesus. But this is just one of the points on which there are two minds in Hegel. When he is reinterpreting the dogmas of the Church, he makes them fit in with his speculative scheme, but on particular points his own real attitude seems to have differed from that necessitated by his system.

Perhaps the most interesting chapter in a most interesting book is the last, "In the New Century." For few as are the years of the Twentieth Century, it has already given many and various answers to that question, "Whom say men that I am?" Arthur Drews answers "A myth," and Jensen "A variant of the Babylonian God-man Gilgamesh." Less rashly Schweitzer represents him as a fanatical apocalyptist, Miss Underhill as an active mystic in whom the independent spiritual life is raised to exceptional grandeur, Loisy as a self-deluded Jewish Messiah, Binet Sanglé as a physical and mental degenerate belonging to a stock ruined by alcoholism and tuberculosis. Such are some of the lineaments which the Twentieth Century has descried in the face of "the historical Jesus." But as Marcus Aurelius wrote (vi. 42) "Men coöperate after different fashions;

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even those coöperate abundantly who find fault with what happens, and who try to oppose it and hinder it: for the world has need even of such men as these." This book will not have failed if it leads men to study for themselves the central figure of history, who in other days was called Messiah, Son of Man and Son of God—names which have become for the modern world little more than compressed parables whose meaning has been lost—and who still comes to us out of the dim and mysterious past and utters that word of command which has so often fallen on ears that are dull of hearing.

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MYSTICISM AND THE CREED. By W. F. Cobb, D.D. London. Macmillan & Co., 1914. Pp. XXVIII, 112.

The value and the liberty of interpretation of creeds form the subject of keen discussion in all churches at the present day, even in those which do not recite formulas of belief in public worship. Dr. Cobb's very interesting book is a contribution to this discussion from a point of view which seems to be almost equally removed from that of ordinary orthodoxy and that of the usual type of broad churchman. He agrees, however, on the practical question, with the demand for latitude of interpretation. The creeds should not lightly be changed, since they sum up and hand on the spiritual insight of generations; yet a fixed form is an anomaly in a world of constant change and progress. The legitimate claims of tradition and freedom can only be reconciled by allowing a very wide liberty of interpretation of the received formulas. Dr. Cobb's own interpretation is that of a thorough mystic. He calls upon us to regard the spiritual significance of the articles of faith as the fundamental one; only so he thinks can we reach a standpoint which, being deeper than the merely historical, is able to make us independent of the results of historical research. The statements of the creed are then to be taken as symbols of eternal spiritual truths. Indeed Dr. Cobb would hold that only the "twice-born" are capable of a real understanding of the creed. The mystic alone has the true standpoint. "Like St. Paul he has had his Damascus day, and ever afterwards that experience is the focus which determines the worth of things. For the voice which has spoken within is a voice that had summoned into con-

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sciousness the love for all living things which heretofore had slumbered, and before Love all other faculties bow their head."

This method of interpretation is applied to all the articles of the Apostles' creed. Dr. Cobb's pages give ample evidence of wide reading and of the activity of an imaginative if sometimes fanciful intelligence. It is clearly impossible for a reviewer to follow him throughout his course, and we may perhaps take the Virgin Birth as a representative example of his treatment. Regarded as a physical event the miraculous birth has no religious value. Not until it has been "raised to the peerage of symbols" can it take rank as a religious fact. Dr. Cobb finds in it a parable of the regeneration of the soul. "Where the soul, figured as Eve, listens to the seductions of sense, *i. e.*, of Life as seeking to act apart from the Whole, she becomes from generate degenerate and must become regenerate, *i. e.*, she must become purified or single-pointed, and then perfect her purification by giving birth to the Christ through the Spirit who is her true husband. Eve must become Mary, and her Son the St. George bruising the serpent's head. The soul is first the daughter, then the spouse, and finally the mother of God." Indifference to the historical is one of the well established characteristics of mysticism, and Dr. Cobb evidently possesses this characteristic in a marked degree. It is remarkable that a large book dealing with a document which contains, *prima facie*, a series of historical statements should give so little space to a discussion of the evidence for those statements. It is in many cases difficult to discover whether Dr. Cobb believes them to be historical or no. It is very easy to discover that Dr. Cobb does not greatly care. Some remarks at the beginning of the book lead us to think that he would exclude the miraculous; on the other hand he is careful to say that the analogy between Spirit and Nature make it probable that spiritual truths will have symbolical expressions in the natural order.

Even Theologians who have no desire to defend an extreme traditionalism will probably feel that so complete a "transcendence" of the historical is not possible for Christianity. The very creed upon which our author is commenting is a standing witness to the fact that Christianity is a historical religion. It is not only a collection of maxims for mystics, it implies a certain view of the world and of the position of the individual soul in it; and this view cannot be divorced from belief in some historical

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events of supreme importance. The peculiar claims of Christianity are bound up with the assertion of the uniqueness of the historical Christ and the uniqueness of the divine impulse behind the beginnings of his religion. It is possible that Dr. Cobb would be able to agree with these remarks in principle, but I cannot help regarding it as a defect in his book that he has not made his position clear in this matter, and it is certain that there are many pages which suggest, even to a careful reader, a different view. Nevertheless, in spite of its dangerous one-sidedness, there is obvious truth in the main contention of the book. The merely historical is not yet religion. Not until historical fact becomes the vehicle of spiritual and eternal truth does it obtain full religious significance.

It appears to be a defect inherent in the mystical temperament to be unable to appreciate the spiritual values which are connected with the state and social institutions. Dr. Cobb has a very low opinion of both Church and State in their "empirical" manifestations, though he is full of enthusiasm for the ideal Church. The actual church appears to him to be little better than a necessary evil. History shows, he thinks, that ecclesiastical organizations almost inevitably degenerate into institutions resting upon force, and, so far from being reflections of the ideal church, become an "instrument of Satan," a means of testing and perfecting of the truly spiritual. The state is even more strongly condemned. It is contrary to "that an-archism which is the necessary fruit of the Christian life." It is a "monument of evil, an excrescence on the community it oppresses under due forms of law."

Many other views expressed by Dr. Cobb invite discussion and criticism. He has some highly controversial remarks on the relations between Christianity, Judaism and Gnosticism. Attention too should be directed to his very interesting defence of the theory of Re-incarnation. It is probable that no one but the author will be able to read his book with complete agreement; but the whole work is a frank statement of an individual point of view by a man of deeply spiritual mind. Many readers who are distracted by the voices of religious controversy will doubtless find in some of Dr. Cobb's reflections indications of a way to a level of religious life where there is peace.

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INTERPRETATIONS AND FORECASTS: A Study of Survivals and Tendencies in Contemporary Society. By Victor Branford, M.A. London: Duckworth & Co., 1914. Pp. xxiv, 411.

The author of this work has thrown himself with immense enthusiasm into the movement of "city-planning" under a general sociological idea. With the enthusiasm it is possible to sympathize without attaching to the idea quite the central importance that it has in his eyes and in those of his master, Professor Patrick Geddes. The idea is good in its proper place, but its place is not at the summit. The modern city is not the equivalent of the ancient city, which was a sovereign state. This was the essence of it, and it was in virtue of this that politics could be conceived as the supreme art of ordering social life. This I hold against Mr. Branford that the translation of Aristotle's πόλις by state rather than city is essentially right. The modern unit corresponding to the ancient city is the national state. This may seem relatively abstract, but the city can never again be substituted for it; and if we try to substitute a federation of cities or "regions"—to make a transition, as the author puts it, "from state and national politics to civics and regionalism" (p. 360), we shall go seriously astray.

In detail, also, I think he is apt to take the wrong models. It is true that his enthusiasm extends to the ancient city, but it is the mediæval city that he most loves to dwell on. Now, while we may admire the rich internal growth of this, a protest is necessary against the notion that it could ever at any time have had the value of a conception dominating life. The mediæval city, even when a republic, was a republic without intellectual liberty. For the political ideal of the time, as expressed by Dante, it was not an autonomous unit but a unit in the universal empire. Thus politically and spiritually—by Empire and Papacy—it was restricted as the ancient city was not. The modern city, which descends from it, is at its best a well-ordered municipality under a national state. This last, in an Aristotelian spirit, though not according to the letter of Aristotle, we may take as the mean between municipality and empire; of which the first is essentially subordinate, while the second is a transitional mode of dealing with huge aggregates brought together or held together by historical accidents. Where we follow Aristotle is in finding our ideal in the mean. The basis of the good or the

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best life of the individual, for any time that can be foreseen, is the unified national state.

If I have put this rather dogmatically, it is for the sake of brevity. For the sake of brevity, also, I leave out several points I had noted. I will only say that the author seems to be one of those individual enthusiasts who, in enjoyment of the recently-acquired sense for the many vital beginnings in the actual Middle Age, ignore the darker side on which to some minds it is still an ideal. When he refers, for example, to "The historic fact of lawyers and politicians having arrogated the functions of the spiritual power without being able to perform the realities of it" (p. 306), I ask: Does this mean that they suppressed the Inquisition "without putting anything in its place," as those who dislike "mere negatives" are accustomed to say? Similarly, when he speaks of "the great problem bequeathed by the Middle Ages—that of subordinating politics to morals" (p. 314), my comment again takes the form of a query: Illustrated by the Albigensian Crusade?

I must, however, add that the actual fault I find in the work is not the suggestion of a more stringent order to bring the modern "anarchy" to a close. I have no objection to anything positive that Mr. Branford derives from Comte, for example. Where he is on the wrong political track seems to me rather in a kind of return to the Spencerian "administrative nihilism" so far as the state is concerned; though his expressed attitude to Spencer is chiefly antagonistic. "The best government," he says (pp. 319–320), "will be the one which most steadfastly sets before itself the ideal of preparing its own euthanasia." To this I reply: The best government—again, for any time that can be foreseen,—will be the one which most concentrates and puts to most use its powers for action.

T. WHITTAKER.

London, England.

SEXUAL ETHICS. By Robert Michels, Professor of Political Economy in the University of Basle. London and Felling-on-Tyre: Walter Scott Publishing Co. Pp. xv, 296 (Contemporary Science Series).

This volume contains much that is interesting about sex but very little in regard to ethics. The ethical formula of sex relationships is that they are legitimate except where they result from

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force or fraud or in the loss of health or in the neglect of any children concerned. The author sometimes gets near this as on p. 36 or again in his very useful remarks about rape or the ideal of male continence or the absurd customs of respectable betrothal, but he is invariably timid in arriving at any positive conclusion, which is not what might be expected of a continental writer producing a book under the editorship of Mr. Havelock Ellis. For example, he considers that books "written in the sole aim of inducing sexual excitement" should be suppressed by law without reflecting that (1) a prosecuting official was sufficiently excited in this direction by Mr. Havelock Ellis' works to prosecute them many years ago, (2) people who want such works can extract excitement out of many seemingly innocent classics, (3) there is no reason why any adult who desires such solitary excitement should not have it.

Again on p. 153 he expresses the hope that his daughters will marry men who "bring their wives the same purity and physical virginity that their wives bring to them." The only reason alleged for this aspiration is that young men are the "custodians of a sacred fire" and "must safeguard their vital energies and must not abuse their physical powers." The loss of such virginity as he mentions need obviously not destroy the young man's "vital energies or physical powers," and the next eight pages are devoted to an exposition of the doctrine that "generally speaking, the men who remain chaste, are men of little worth." In fact the chapter ends with a very effective protest against the implied guarantee of virginity that is demanded from women.

The author does not seem to have grasped what I maintain to be the fact that the whole theory and practice (such as it is) of Christian sex-morality reposes on nothing but the compulsory virginity of unmarried women and this is the whole issue of the modern problem. It is very well stated by Professor Förster of Zurich, who, though not a Catholic, champions the Catholic point of view. What the student of these problems wants is a reply to Förster, which this inconclusive essay certainly is not.

Another almost equally vital issue is the question of divorce. The word does not occur once in the book but the whole discussion of sex-morality is at the moment hinging on this problem.

It is also odd that the continental writer of an English book on this subject should utterly ignore the English and American attitude towards it. The English and the Americans are not

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more rigid than other people but they believe in propagating chastity by "suggestion." They bring up their children to imagine that intercourse outside marriage only goes on in quasi-criminal circles. When the children grow up they know better but continue the same policy. Those who break the code secretly are often the first to praise it for obvious reasons, and those who are found out silently bow to a hypocrisy which they consider essential for the moral safety of the community. We are practical but mentally indolent. We see that the problem is difficult and that its discussion may violate social peace and this is our compromise. But a continental writer need not be so timid and this book is evidently inconclusive by reason of timidity. The author denounces "materialism" with a vagueness that one associates with the English and American newspaper. What a "materialistic" theory of the universe has to do with his thesis or why he should denounce it or whether he understands what the word means is a problem more worth studying by the psychologist than the philosopher.

E. S. P. HAYNES.

London, England.

THE MEANING OF MARRIAGE. By G. Spiller. London: Watts & Co., 1914. Pp. VI, 120.

According to Mr. Spiller, "manifestly if we want to know the meaning of marriage we ought to search out homes where conditions are favorable. Afterwards we may allow for every kind of deviation from the norm . . . we are aware we must examine particularly those where the ideal and real coalesce."

Subsequent passages in the book imply that what most of us call an ideal marriage is here accounted "the norm" and consequently to many of his readers Mr. Spiller's valuation seems too high. For him marriage is the best possible arrangement in a world which also closely approximates to the best possible type, but his proofs leave us cold, his arguments unconvinced as to his knowledge of facts or capacity to advise. However he does advise every one—parents, teachers, married folk and unmarried, widows and widowers. To some, probably, his counsel will seem fatuous: For example, many men and women confronted by real problems will find it impossible to take such suggestions as "*never* to let a scolding word pass our lips" or "*never* to raise

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our voice beyond the conversational scale" as illuminating suggestions. Mr. Spiller has spoilt his short bibliography by unscholarly criticism.

NANCY CATTY.

London, England.

THE PROBLEM OF INDIVIDUALITY. By Hans Driesch, Ph.D., LL.D., London: Macmillan & Co., 1914. Pp. x, 84.

This book consists of four lectures delivered at the London University in October, 1913. In it the author endeavors to formulate in a necessarily sketchy manner the main outlines of his philosophy. The first two lectures are a kind of synopsis of his *Gifford Lectures*, and in these the empirical proofs of Vitalism are set forth. In the third lecture he attempts an *a priori* deduction of the conceptions of Vitalism, on the Kantian model. Finally, in Lecture IV, the question is discussed whether the Universe is organic, and it is this that constitutes the "problem of individuality."

The doctrine of Vitalism, according to Driesch, means that *life is autonomous within a limited field*, that "there is some agent at work in morphogenesis which is not of the type of physico-chemical agents" (p. 19). The chief argument (p. 14) in support of this theory is developed in the first lecture. Driesch is anxious to show with absolute conclusiveness that Vitalism is true. He therefore attempts to develop a contradiction from the hypothesis that a "machine" is the basis of certain living phenomena, it being assumed that Vitalism is the only alternative to a "machine" theory, so that if it is proved that every "machine" theory leads of necessity to a contradiction, Vitalism will be established. Very briefly stated, the proof is as follows:

There are certain biological phenomena which are "harmonious-equipotential" systems, that is, systems, each element of which is *capable* of playing a number of *different* rôles. The *actual* rôle it plays in any given case being a "function of its position" (p. 18 *et passim*). The normal *blastula* of the sea-urchin, *e. g.*, develops into a normal animal; but if it is cut "with a pair of very fine scissors in any direction you like, each part so obtained will go on developing—provided it is not smaller than one quarter of the whole—and will form a *complete* larva of small size" (p. 11). What each cell does is always in "harmony"—

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given certain conditions—with what is done by its fellow-cells. Could a "machine" be the basis of this phenomenon?

Driesch symbolizes the facts by four rectangles, a large one containing the remaining three which overlap each other. We then have the proof: "The large rectangle represents an H. E. S. [harmonious-equipotential system] in its normal undisturbed state. It might *a priori* contain a very complicated kind of 'machine' as the foundation of development. But any fragment of the system (the small rectangles and innumerable others), contingent as to its size and to its position in the original H. E. S., is equally able to produce a small *but complete* organism. On the basis of the mechanistic theory, then, any fragment of the H. E. S. would contain the same 'machine' as the original system. This is absurd" (p. 18).

This conclusive proof of Vitalism appears to be lacking in cogency. "On the basis of the mechanistic theory, then, any fragment of the H. E. S. would contain *the same* 'machine' as the original system." The words "the same" in this sentence bear the whole burden of Vitalism. They mean "the identical" —only thus does absurdity arise—yet what is the warrant for their use in this sense?—Let it be remembered that the animals resulting from the development of parts of the normal blastula are *not* "the same" as each other or as the normal animal. *They are of different sizes:* only their forms are "the same." What they require, therefore, as their bases, is not *the same* "machine," but *similar* "machines." If "the same machine," in Driesch's statement, were replaced by the legitimate words, "similar machines," the contradiction would vanish.

To demonstrate this, let us keep "the same" in Driesch's statement, and instead of "machine," which Driesch considers impossible, let us put, what he considers correct, a "non-physico-chemical agent." We then have: On the basis of the facts, "any fragment of the H. E. S. would contain *the same* 'non-physico-chemical' agent as the original system." We may add, as Driesch does, *mutatis mutandis*, "This is absurd." That is to say, the professed contradiction does not exist, the apparent absurdity being due merely to the manner in which the argument is stated and disappearing as soon as the statement is corrected. If, however, it be maintained that Driesch's statement is correct as it stands, it is obvious that "harmonious-equipotential" systems have no basis whatever, either mechanical or other.

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For, if possible, let x be the *real* basis of such a system; then, whatever x may be, retain Driesch's statement substituting x for "machine" and "true" for "mechanistic," and the result is an absurdity.

The "second" empirical proof of Vitalism is in principle identical with the "first" (and admittedly the most important); it depends on the words "the same" (p. 22). Driesch states that J. S. Haldane accepts this "second" proof. This is misleading. Haldane expressly rejects every proof of Vitalism, admitting only that the facts which Driesch considers in his "second" proof are not capable of a mechanistic explanation. For Haldane Vitalism is not, as it is for Driesch, the only alternative to mechanism.

Considering the author's advocacy of Vitalism, the last lecture deals with a question that, one should have thought, might have been dismissed *in limine*. Vitalism means the autonomy of life within limits, according to Driesch, and this doctrine is believed to be *proved*. Yet in the last chapter it is discussed whether the Universe is organic. If, however, certain parts of the Universe are autonomous, how *can* the whole Universe be organic? The discussion is nevertheless interesting since the alternatives are a Monism or a Dualism of *order*, not of *substance;* but it is altogether too brief to be of much value. One finds a difficulty, *e. g.*, in discovering what kind of order it is that is to determine the question, while concepts, such as contingency and determination are used without sufficient introductory explanation. Driesch is himself compelled to adopt a Dualism. But to adduce, *e. g.*, the contingency of human affairs (whatever this may mean), as an argument against the organic unity of the Universe, is not very enlightening, though, if it had been fully explained, we might have seen that it is true.

It is doubtless owing to the small compass of the book that in many places gaps appear in the argument, and that the exposition is often far from clear. The discussion of the logic of Vitalism in chapter III is all too brief, and *seems* to take no account of recent work on the theory of order. The publication is nevertheless timely in that it provides a short exposition of Vitalism, its grounds and consequences, as these are seen by the chief advocate of this doctrine.

BERNARD MUSCIO.

Cambridge, England.

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FEEBLE-MINDEDNESS: Its Causes and Consequences. By Henry Herbert Goddard. New York: The Macmillan Company, 1914. Pp. xii, 599. $4.00.

Dr. Goddard is well-known to students of genetics by the work he has been carrying on at Vineland for many years, one outcome of which was the book on "The Kallikak Family" which commanded widespread attention when it appeared a short time ago. That monograph, it will be remembered, showed the hereditary character of feeble-mindedness in an extraordinarily clear case. A Revolutionary soldier left two lines of descendants, one through a feeble-minded woman, the other through a normal woman. The one line has been preponderantly feeble-minded, the other almost without exception normal. The present work is a presentation of studies of 327 families and is of first importance for all students of social problems.

Six fundamental groups are distinguished: (1) where feeble-mindedness is certainly hereditary, 164 families; (2) where it is probably hereditary, 34 families; (3) where the families show marked neuropathic conditions though not hereditary feeble-mindedness, 37 families; (4) where some accident is clearly the cause of feeble-mindedness, 57 families; (5) where no cause has been discovered, 8 families; and (6) where there is too little known to classify the cases, 27 families.

The charts for these groups are presented one by one although, of course, it is impossible to present all the evidence on which the investigators made their judgments classifying members of the various families as feeble-minded or normal. The author is confident that the data are reliable. The field workers have been checked by other field workers. If we accept the reliability of the data, the charts themselves are in most cases decisive immediately upon inspection. The hereditary character of the great proportion of feeble-mindedness stands out too clearly for doubt —or if we wish to be more guarded we may say, it is clear that children in these cases are like their parents.

Of especial importance for philanthropy and legislation is the conclusion that the higher grades of feeble-mindedness, the morons, are the most dangerous to society. Idiots and imbeciles are, of course, themselves a burden but there is far less danger that they will leave posterity. Morons, on the other hand, are likely to have as large families as normal persons; in fact the 139 mothers in the hereditary group had a total of 992 children, or

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an average of 7.1 children per mother as against an average of 5.1 children per mother in the accident group.

There is a relation between alcoholism and hereditary feeble-mindedness, but it is not evident from the figures which is cause and which is effect. Dr. Goddard's own judgment is: "If alcoholism did cause feeble-mindedness, the number of the feeble-minded would be enormously greater than it is now." "More people are alcoholic because they are feeble-minded than vice versa."

The force of such a study as this is compelling. The great question is, what shall we do about it? The first possibility is that we should do nothing. Unless the feeble-minded marries another feeble-minded individual, the offspring are not likely to show feeble-mindedness. Nevertheless the modern studies along Mendelian lines have shown that such offspring are not sound; in technical terms, part of them are "simplex," not "duplex." If mated with other similar persons, who may appear quite normal, a certain proportion of their offspring is almost certain to be feeble-minded. Prohibition of marriage between the feeble-minded is futile, for it does not prevent them from becoming parents. Colonization is good, but it is likely to be long before provision can be made for all. Sterilization is useful in individual cases but likewise for various reasons not a general solution. Meanwhile the immediate program should be to learn more about the situation. The mere fact that most feeble-minded are to be viewed as cases of mental arrest—as children of various ages—if all its implications are followed out, will be highly important for their treatment. We repeat that the author is performing a high service by these studies which are of importance to social workers, parents, legislators, and courts.

J. H. T.

I. An Essay on the Civilizations of India, China and Japan. A Report made to the trustees of the Albert Kahn Travelling Fellowships. By G. Lowes Dickinson. London and Toronto: J. M. Dent & Sons, 1914. Pp. 86.

This book should be considered in connection with "Appearances," by the same author, a short notice of which appeared in the January number of the Journal, though "Appearances"—the preliminary sketches for the slight but significant finished study—touches on some points not developed

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in the Essay. In both, the style is so limpid, and the proportion between thought and expression so severe, that they seem at first colorless and bald; but attention quickly reveals rare mastery of language and distinction of mind. It is a mind somewhat resembling John Galsworthy's, with instincts and standards as fastidious, but more completely intellectualized; with something of Edward Carpenter's serenity and courage, though inferior in psychic originality and creative force; a mind free from parochialism or vulgarity, but with a certain thinness of emotional fibers. In his very suggestive remarks on the Hindu conception of religion, he observes that spiritual experience is the most individual and incommunicable of all, and questions whether the spread of modern scientific methods may not be incompatible with that experience, even in the small number of people who have its potentiality. The problem is not peculiar to India; but it seems to us that if Western civilization is ever to attain to any real mastery of life (apart from its material framework), we must learn much experimental psychology from the East. Among other things "that power of prolonging an emotion which seems to be the secret of Eastern Art,"—and Mr. Lowes Dickinson might have added of Eastern pleasure as well. We should no more fear the extinction of the gift of mystic ecstasy than that of artistic creation by the growth of knowledge; rather will religion—like love—become more spontaneous when no longer petrified into obsolete institutions. Already educated Indians are beginning to control that disastrous fecundity—the first step in the enlightened culture of life; and the great war must revalue as many values in India as elsewhere.

The civilization of China and its modifications in Japan, Korea, and Indo China has a peculiar importance. It has been the most stable and in some respects the most elaborate of human societies, and has blossomed in a unique art. Mr. Lowes Dickinson's estimate of Chinese character and achievement, past and future, is high. The monotony and squalor which so many competent observers have noted as the groundwork of Chinese life, hardly appear in his survey. He emphasizes the "positive, secular, and democratic" spirit of the Chinese, and their aptitude for science, enterprise, and organization; and the momentous change now in progress in China. "The educational process has begun, the education both of events and of schooling; and to education the Chinese are eminently responsive." Surely

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their keen sense for the actual will soon find that they must adapt their rate of increase to the development of their resources and to the pace of change by methods less wasteful than their former customs; and that modern industrialism, like the larger finer social order which may develop from it, is incompatible with the patriarchal family. In Japan industrialization has gone further than in China, and Mr. Lowes Dickinson anticipates a more rapid ethical and social *debâcle* in consequence. He observes that a "sense at once of the beauty and the tragedy of life, this power of appreciating the one, and dominating the other, seems to be the essence of the Japanese character," but the next stage in their evolution will be inimical to beauty and to human dignity and freedom.

F. W. STELLA BROWNE.

London, England.

KRISHNA AND THE GITA. By Sitarath Tattvabhushan. Calcutta: Brahmo Mission Press, 1914. Pp. xii, 406.

This sincere and learned exposition should be known to all students of the Bhagavadgita. That poem is familiar to many who have never ventured elsewhere into Indian philosophy and literature: its form is so dramatic, its main lesson (that we should abstain not from action but from its fruits) is presented so clearly, and it faces the problem War with a frankness so unknown to Christianity, that it must always make a strong appeal. But its difficulties are immense, and Mr. Tattvabhushan, who combines Hindu insight with Western rationalism, is well equipped for dealing with them.

He writes from a Brahmaist, that is to say from a Unitarian, standpoint; he rejects all miracles and appeals to authority, and dethrones the Puranic Krishna and Arjuna to put in their chariot the Divine Logos, guiding the passions of man. Nor does he follow those Brahmaists who, like the late Maharshi, believe that India has nothing to learn from Christianity. Though denying any direct Christian influence on the Gita, he compares it, often disadvantageously, with the Pauline epistles and the Fourth Gospel, and whether we follow him here or not, we can recognize the fairness of his mind. Knowledge of God, he holds, can be gained neither by intuition nor by instruction, but by a steady devotion to philosophy; to neglect all teachers would be wrong, to follow one teacher would be equally wrong.

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He admires the Gita because it seeks for the truth underlying the apparently contradictory schools of the Sankya and the Vedanta; he himself seeks for the truth underlying the Gita and the doctrines of the West. Though learned and technical, he is never dogmatic. "It is needless, nay even harmful to din a truth into a person's ears in the name of God. The true service to him is to help him to purify his heart and cultivate his understanding." Such is the spirit that inspires his work.

It opens with a discussion of historical questions. The various strata of the Mahabharata are dated from the fifth century B. C. to the fifth A. D., the Gita being one of the latest. Krishna is derived out of two actual characters, one Aryan, the other non-Aryan, who were combined into a god by the Brahmins when they were counteracting Buddhism. Then Krishna's moral claims to divinity are discussed, and dismissed as severely. Then we examine the obligations and relations of the Gita to other Indian schools of thought, and conclude with its teaching on *gnani*, *karma*, and *bhakti*, which are paralleled with the Faith, Works, and Love of St. Paul. The dramatic interest of the Gita, its pathos, its poetry, are mentioned seldom, for in rejecting the idolatry of Vaishnavism, Mr. Tattvabhushan must reject much that is alluring and beautiful. Religious truth, as he conceived it, is cold; he shares the frigidity of all Unitarians. But he urges each hearer to decide for himself, in the light of his own spiritual experiences. His is not the coldness of dogmatism.

E. M. FORSTER.

Weybridge, England.

SHORTER NOTICES.

THE CHALLENGE OF FACTS AND OTHER ESSAYS. By William Graham Sumner, edited by Albert Galloway Keller. New Haven: Yale University Press, 1914. Pp. xii, 450. $2.25.

This is a companion volume to "Earth Hunger" published in 1913 and it is the intention of the publishers and editors ultimately to bring out one more volume which will close the series. This volume contains a welcome sketch of Sumner in which it was fortunately possible to incorporate some account of his mental development from his own pen. Most of the papers here brought together have previously appeared in print, but several are new, of which the title essay (a critique of socialism) and a long essay on "Advancing Social and Political Organization in the United States" are the most important. No American writer on social subjects has such a trenchant style and no exponent of individualism is likely to say again so clearly and forcibly what Sumner has said. Such an essay

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as that on the "Shifting of Responsibility" is equal to a volume. The point of view is well known but perhaps has never been more concisely stated than by the editor in his preliminary sketch: "He adopts the conception of society according to which it is the seat of forces, and its phenomena are subject to laws which it is the business of science to investigate. He denies that there is anything arbitrary or accidental in social phenomena, or that there is any field in them for the arbitrary intervention of man. He therefore allows but very limited field for legislation. He holds that men must do with social laws what they do with physical laws—learn them, obey them, and conform to them. Hence he is opposed to state interference and socialism, and he advocates individualism and liberty." The alternative which Sumner frequently proposed is absolutely exclusive. Nature grants her rewards to the fittest. "If we do not like it, and if we try to amend it, there is only one way in which we can do it. We can take from the better and give to the worse. . . . We shall thus lessen the inequalities. We shall favor the survival of the unfittest, and we shall accomplish this by destroying liberty." The possibility that we may in some way improve the worse does not enter into Professor Sumner's formulation of the problem. The whole cause for constructive social reform lies in this third possibility. A fine portrait increases the value of the volume, especially for those who have sat under this keen and fearless figure.

J. H. T.

BUSINESS, A PROFESSION. By Louis D. Brandeis, with a foreword by Ernest Poole. Boston: Small, Maynard & Co., 1914. Pp. lvi, 327.

This collection of addresses brings together a number of papers which have a certain unity in point of view. The title points out how business is becoming a profession because of the necessary intellectual element, the possibility of public service, and the non-financial standard of success. Other essays deal with Capital and Labor, Life Insurance, Savings Banks, Insurance, Trusts, Competition, Railway Monopoly. The treatment is characteristic of an author who has been notable for his ability to see both sides and to find through applications of scientific method solutions for problems that have seemed insoluble otherwise. The possibility of finding through applied science a better way than either capitalist or labor or monopoly advocates is one that ought always to be present as a working hypothesis in any social problem. The foreword gives a sketch of the author's life.

J. H. T.

THE CONFESSIONS OF FREDERICK THE GREAT, WITH LIFE. By Heinrich von Treitschke, translated into English. New York: G. P. Putnam's Sons, 1915. Pp. xxv, 208. $1.25.

To understand modern Prussia one must begin with Frederick. The life by Treitschke contains an authoritative presentation but a more sympathetic one than Macaulay's essay, which is the most frequent source of English views. The Confessions were in part translated into English in the eighteenth century, but the present interest in Bernhardi and the sources of his thought lends them timeliness. The doctrine is much the same.

J. H. T.

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ALSACE AND LORRAINE FROM CÆSAR TO KAISER, 58 B.C. TO 1781 A.D. By Ruth Putnam. New York: G. P. Putnam's Sons, 1915. Pp. viii, 208. $1.25.

An outline of the history of these provinces with several maps which is intended to enable the reader to understand present conditions.

THE RISE OF THE WORKING-CLASS. By Algernon Sidney Crapsey. New York: The Century Co., 1914. Pp. ix, 382.

The thirteen chapters in this volume are devoted to the vivid recital of some of the hapless conditions occasioned by the modern industrial system, and the exposition of the development of the working-class.

The industrial system has brought radical changes into the family. The father is no longer the head of the house, changing conditions have deprived him of the position he previously held. The family has lost its stability because the woman is economically independent and the state presumes to regulate the relations between father and children. The responsibility of the mother is greatly increased as a correlate of her independence. No longer able to depend upon the man, for various reasons, she must nevertheless take care of her children as best she can. Society still acts as though the family exists, and demands that children should be born in a family, in order to assume with honor their place in the world.

The out-family woman has become a serious problem for society. In the first place she is a product of the industrial order, while her presence is resulting in the degradation of society. The earnings of young people are such that they can not afford to marry. They do not, however, abstain from sexual indulgence, and risk the misery and death that certainly result from an uncontrolled manner of living.

The present industrial order has given rise to exploitation such as the world has never seen before. The working-man is not even looked upon as a slave or servant, for these are accorded a measurable degree of care. The modern workman is treated as an impersonal attachment to a larger machine. "He is bought and sold in the market as so much labor commodity."

In conformity with his living conditions the working-man has developed a politics, a morality, and a philosophy. These will be the active agents in the struggle that he is bound to make in order to improve his conditions. These are signs that men are becoming thoroughly alive, and are realizing that the old order must change. They are learning that it is built on such false doctrines as *laissez-faire* and freedom of contract, doctrines that have created a structure which must fall of its own weight.

J. K.

SECOND REPORT OF THE ASSOCIATION CONCORDIA OF JAPAN. Tokyo, July, 1914.

This is the organ of an association whose purpose it is "to promote the progress of civilization by international co-operation." As the name implies this is an organization founded in Japan for the purpose of promoting better understanding between the East and the West regarding each other's faith and ideals.

The distinguishing feature of this movement is that it proposes to concern itself with spiritual matters, as this aspect is not an integral part of the various peace societies. They aim to consider more particularly the political and economical relations of the various nations; that is, the more material activities. The council proposed for the furtherance of the

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society is being organized and is to consist of many notable names of Americans and Europeans.

J. K.

THE GOD WHO FOUND HIMSELF. By Alfred Ward Smith. Boston: Sherman, French & Co., 1914. Pp. xxx, 176.

The author of this book proposes to work out a thorough-going doctrine of Monism on a level of popular literature. The argument is based on a curious mixture of Hindu lore, and facts gleaned from books on "popular" science. Poetry too has been drawn on extensively.

J. K.

WHAT CAN I KNOW? By George Trumbull Ladd, LL. D. New York: Longmans, Green & Co., 1914. Pp. vi, 311.

This volume represents an effort on the part of Professor Ladd to lead the reader, who is assumed to be essentially a layman in philosophy, into a consideration of some of the problems of that science. The style of the book is such as to tempt the intellectual palate of the reader. The content is frankly not doctrinal in character, it does not pretend to provide a ready means of attaining truth. The author hopes to induce wholesome thinking on philosophical topics with the end in view of discovering for one's self what one can know.

J. K.

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PERPETUAL PEACE AND THE DOCTRINE OF NEUTRALITY.

JAMES CREED MEREDITH.

REPLYING to an interpellation in the Spanish Chamber on the 28th of January last, regarding naval bases, Señor Dato, the prime minister, is reported to have said that he was glad that all nations had respected Spanish neutrality. Anything implying sympathy with any of the belligerents would create difficulty for the government. They wanted their voice to be heard when peace was concluded. On that account they were observing strict neutrality.—These remarks would seem to suggest that the Spanish Prime Minister is, like so many others, possessed of the peculiar notion that there is something dignified and even meritorious in the position of neutrality, and that in remaining neutral a nation is to be regarded as obeying some high call of duty. A nation, forsooth, that has stood aloof while every known principle of international law was being violated, and that has refrained from expressing the slightest concern in the ultimate issue of the struggle and avoided indicating the least sympathy with any belligerent however outraged, is entitled to be heard with particular respect on the conclusion of peace—as it comes forward, clothed with the dignity of unsullied neutrality, with a superior air suggesting terms to those who are covered with the dust and blood of battle.

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Such views are, however, too repugnant to common sense, too obviously distorted, and too irritating to our sense of justice, to afford a suitable text for a temperate discussion of the extent to which the attitude of neutrality deserves to be respected. It is better to deal with the problem as it arises at the point at which philosophical and political speculation comes into contact with the strict legal treatment of principles of international law.

International law does not recognise a duty, or even a right on the part of a state to remain neutral while other states are engaged in war. But neutrality may be professed on the one side and admitted on the other, and in that case international law defines the terms and conditions upon which it is to be preserved and respected.

The law of neutrality, and even a word to express that relation, is of comparatively modern origin. "According to the laws of war, observed even by the most civilised nations of antiquity, the right of one nation to remain at peace, whilst the neighbouring nations were engaged in war, was not admitted to exist. He who was not an ally was an enemy; and as no intermediate relation was known, so no word had been invented to express such a relation."[1] But "Little by little a third attitude became recognised as possible and legitimate; and its maintenance has gradually been transformed into a duty by the jealousy of belligerents, whose anxiety to deprive their enemy of advantages which the preference of the neutrals might give to him has been helped by the equal anxiety of neutrals to continue their habits of trade and intercourse."[2]

The code or rules which has grown up affecting states in this new relation involves a compromise between conflicting interests, and there are admittedly "two broadly divided tendencies of opinion as to its right basis, of which one prefers the interests of the neutral and the other those of belligerents."[3] But it is beyond the province of the

[1] Wheaton, *International Law*, p. 549.
[2] Hall, *Treatise on International Law*, p. 75.
[3] *Ibid*, p. 76.

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international lawyer to settle precedence between these conflicting interests. "He must leave to moralists and to statesmen the task of deciding which of the two are the more worthy of encouragement, and therefore which theoretic tendency is to be preferred."[4]

But the theorist is not limited to the consideration of the problem from the precise point of view from which it arises for the international lawyer. It is just because he has a peculiar point of view of his own that he is a theorist and not an international lawyer. In the form in which the question is presented the only interests that appear to be involved are those of neutrals and belligerents respectively. But on what ground is the theorist to prefer one of these interests to the other? He must enquire what is the dominant interest intended to be served by the existing regulations as to neutrality, and, having decided this, he must consider how far the promotion of that interest tends to promote the essential purposes of international law and the organisation of the human race as a society of nations. Approaching the problem from this point of view, he may come to a theoretical conclusion on considerations which treat the relative precedence of the interests of neutrals and belligerents as of merely secondary importance.

The immediate interest which provisions in respect of neutrality are intended to serve is the localisation of war. That is obvious. The law of neutrality is meant to facilitate nations keeping out of any war that arises, or, in other words, to confine the war to as few belligerents as possible, that is to say, to localise it. And, no doubt, this seems at first sight a most laudable object. Assuming that war is in itself a calamity, it would appear almost self-evident that the primary aim of diplomacy should be to avert war, and, failing this, that its secondary aim should be as far as possible to confine its extent. And where diplomacy has no sinister object in view, it does in general aim at localising war when it cannot avert it alto-

[4] *Ibid*, p. 76.

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gether. The law of neutrality as it stands at present simply gives effect, or is intended to give effect, to that general policy.

Now, if the wisdom of that policy is not to be impugned, the theorist is bound to regard the rights of neutrals as of paramount importance. But there is one fact that must give us pause before accepting a merely superficial view. If the localisation of war is part of the settled policy of diplomacy, then nature, in the sense of the inevitable course of human progress, and diplomacy, are striving in opposite directions. The growing complexity, involution and ever-increasing ramifications of trade interests, not to mention less potent influences arising out of the general social and political organisation of the human race, make the localisation of war more and more difficult. For decades past diplomacy has been striving to localise any trouble that might arise in the Far East or the Near East. But surely and steadily the Far East and the Near East have, so to speak, been drawing nearer, and the affairs of East and West have been becoming more inextricably involved. Despite all efforts at localisation, the present war has attained the most imposing scale of terrible grandeur yet witnessed in the world's history. Further, this war has brought home to us more than any previous war the extent to which neutrals, however much their neutrality is respected, must become affected by a great war. And in the aftermath of the war most of them will probably suffer as severely as the belligerents. It is easy, then, to conceive a stage at which the localisation to any extent of a great war might become impossible owing to those nations not primarily concerned finding it to their interest to combine and step in at once to assist one side or the other for the purpose of bringing the war to as speedy a termination as possible. If this is not a groundless speculation, nature must eventually get the better of diplomatists. Which, then, is the more profoundly wise, nature or diplomacy?

Diplomacy, by encouraging neutrality on the part of

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the nations not primarily interested in a dispute, is in effect simply striving to make all codes of international law so much waste paper, or, at least, to make them so the moment any state chooses to disregard them. International law thus becomes obliged to admit the false and self-destructive doctrine that it is not concerned with the origin of any dispute, even though the origin be a flagrant breach of the most fundamental principles of international law itself. The disputants are relegated to the primitive right of self-redress, and the duty of all other states is simply to keep the ring. Rights are admitted, but the weaker state is left to enforce its right against the stronger. This is the meaning of the contention of some Germans that even the most solemn treaties are mere waste paper. The statement is not a statement of things as they ought to be, but a trenchant criticism of the existing basis and sanctions of international law. Properly read it should be interpreted as a denunciation of an attitude on the part of international law which nature is intent on making more and more untenable. For it is clear that the contention would make international law a transparent farce, and that it is, therefore, repugnant to the universal interest which the existence of international law is intended to serve. If, to adopt the Kantian phraseology, the maxim that underlies the contention were universalised, it would be seen to be self-contradictory. Hence it follows that if all states —the disinterested as well as those that are primarily interested in a dispute—could be drawn into every war, if, that is to say, war could in every case be universalised, there would be a reasonable hope of securing a steady preponderance of might in favor of right. In this way the authority of international law would be restored, and to that extent the tendency of war if once started to become universal operates as a tendency to prevent it altogether, whereas all efforts to localise war are only efforts to perpetuate it.

International lawyers, pressed by the difficulties of the position that international law is not concerned in any way

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with the origin of disputes that lead to war, refer vaguely to the sanction of general international opinion. But who is to express this opinion and how is it to be voiced effectively? The discussion, already referred to, in the Spanish Chamber, is an interesting commentary on the futility of any such sanction. Even an expression of sympathy with any of the belligerents would create difficulties for the government! However, Señor Soriena, replying to Señor Dato, complained that the parties of the right had not in fact observed the same strictly impartial attitude as those of the left. The former had left cards at the German Embassy. "We" he declared (with praiseworthy spirit), "shall oppose cards to cards, and attitude to attitude." It has not since been reported whether Spain has actually been plunged into the threatened war of opposing cards and confronting attitudes, but, if it has, we dare not hope that the result of its bloodless battles will do much to shape the destinies of Europe. Yet the absurdities of such mock heroics indicate the fullest extent to which the expression of international opinion, as the ultimate sanction of international law, can be pressed within the strict limits of neutrality.

Speaking of what used to be known as an "unjust," or unprincipled, enemy, Kant, who, however, seems to have regarded the right of neutrality as an inherent right of nations, says: "This is one whose determination publicly expressed, either by word or deed, betrays a maxim which, if reduced to a universal rule, would preclude the possibility of a state of peace among nations , and inevitably perpetuate a state of lawless nature. This is seen in the violation of treaties, a matter which may be presumed to affect the interest of all nations. For it puts their freedom in peril, and compels them to combine against such wrongdoing and deprive the enemy of his power of injuring them." [5] But if the law of neutrality is made unduly favorable to neutrals, there must always be a probability that some of those nations whose freedom is imperilled in this way

[5] *Rechtslehre*, § 60.

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will, from the selfish motive of pursuing their trade interests, refuse to join in the combination, because they suppose that those who have already joined will be able, though perhaps only after an exhaustive war, to win the battle of freedom for the world. Let us therefore rejoice to observe a deeply moving tendency in the logic of things to make neutrality intolerable. Nature is making broad its shoulders to sustain the rights of nations.

Besides attempting to rob international law of its appropriate sanction—the force of disinterested nations whose sympathies would naturally tend to be enlisted on the side of right—diplomacy, in seeking to localise war, is in effect attempting to shut out the influence of all states whose primary desire is for peace. The moment a threatening war-cloud appears on the horizon, every state whose immediate interests are not likely to be affected stands aloof for fear of being drawn into the dispute, and begins to prepare ostentatiously for the due observance of an attitude of strict neutrality. Then, if hostilities actually break out, it is considered an unfriendly act for any of the powers that are pacifically inclined to intervene until the war has run a normal course and it has become clear that the spoils are to go to the victor and the original merits of the dispute to be totally disregarded. Finally, as a reward for having done nothing in the interests of peace or to promote the meritorious settlement of the dispute, the neutral states expect to be heard with respect as to the terms of peace, and even occasionally claim a right to participate in any injustice that may be perpetrated. But if nature could only defeat the aims of diplomacy, and make neutrality during a long war more onerous than belligerency during a short war, she would have set up the most potent and effective influence in favor of peace.

If we wish for more light on this question of whether the aim of nature or that of diplomacy is the wiser, we have only to consider how matters would stand if the ideal order of things were to exist. For that purpose we may reasonably be excused from debating the point as to whether

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or not reason really furnishes us with any true ideal or norm for our guidance. It is sufficient that where such an ideal or norm is assumed, it is always taken to be a systematic and legal relation of all states, determined by some international council having the support of a concert of the powers, as the result of which war would be a continually averted calamity.

It is immediately evident that the observance of an attitude of neutrality is inconsistent with the existence of an *effective* international council. For such a council could not make itself effective otherwise than by means of some sort of international police, or by means of the concerted actions of the powers not primarily concerned in the dispute—what Mr. Roosevelt calls an international *posse comitatus*. The notion of coercing great powers by means of an international police force seems somewhat whimsical, but, in any case, powers contributing their contingents to that force could hardly be considered neutral. Concerted action by the powers is, of course, the direct antithesis of their neutrality. So neutrality is clearly repugnant to the ideal order of things.

This reflection, that the result which natural tendencies are striving to attain is one essentially bound up with the ideal order of things, ought of itself to win an attentive hearing for the voice of nature. But at this point we encounter a new enemy to progress. Pacificism comes forward and plays into the hand of diplomacy, contending that we must continue our efforts to localise war, and to prevent distinterested nations being drawn into any dispute, *until* they have first managed to get their international council established, and a tribunal is set up to decide every case according to the merits and direct the *posse comitatus* how to act. The proper place for dealing with the sophisms that underlie this notion will come in due course if we turn to the general and vital question of how the aim of nature may best be promoted—supposing that it is to be preferred to the policy by which existing diplomacy is seeking to influence the trend of international law.

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As already remarked, even the existing law of neutrality exhibits two conflicting tendencies, one of which prefers the rights of neutrals and the other that of belligerents. What is more, important questions have already arisen between the belligerents and neutral states, and, in the course of time, other important questions will no doubt arise, the determination of which will depend upon the relative precedence given to those two conflicting tendencies. Here, then, is a step forward on the road of progress that can be taken at once. The rights of belligerents can be preferred to those of neutrals in the determination of every dispute which is not immediately determinable by reference to existing treaties and conventions or to any firmly established principles of international law. The interests of neutrals, in other words, can be made to give way to those of belligerents on all debatable ground. The shaping of international law in the future could thus be directed to removing all possible inducements to neutrality.

It is doubtful, however, if this will be done designedly and for the laudable purpose of discouraging neutrality in the future, but there is a reasonable hope that from natural causes the questions will in fact be determined in favor of the rights of belligerents, and that, accordingly, the trend of international law in the future will be in the preferable direction. Nevertheless, it would be quite possible for Great Britain, for instance, in pressing the rights of belligerents, to insist to the utmost on the point that the rights of nations fighting in defence of the fundamental principles of international law must be regarded by international law as paramount, and that under such circumstances the right of a nation to remain neutral, as if the violation of international law by other states were none of its concern, is only a concession *ex gratia*. Such a position, if acquiesced in, would rapidly mould international opinion, and the sense of national honour would be enlisted in favour of intervention in every case where the public of a nation felt that an act of international injustice

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had been perpetrated. In this direction even pacifist societies might do some good work. For years they have been toiling without success to produce in the public mind an unqualified and undiscriminating antipathy to war. If only they would cast out their net on the other side they might be better rewarded.

Further, a resolute effort might be made to prevent neutrals interfering in the terms of peace. It should be strenuously maintained that a nation in remaining neutral pleads that the area of the dispute is beyond the sphere of its influence. There is abundant evidence that the hope of being allowed a voice at the conclusion of war, and thus saving national honour, operates to restrain the public demand for intervention even when the sympathies of a nation run strongly in favour of the belligerents on one side or the other. It would be difficult to conceive a more preposterous claim. Yet, when the present war draws to a close and terms of peace come to be discussed, we may expect to hear states, whose sense of justice was unmoved by any violation of international law during the progress of the war, soliciting the most respectful hearing as to the precise terms to which the victors may be regarded as fairly and equitably entitled. Should not the victors then say: Stand back and let us speak with our enemies, who at least fought a brave fight. But you! What do you know of justice? The cold earth that covers our dead was more sympathetic than you.

However difficult the task of establishing some organization of states in their external relations and of procuring an adequate sanction for international law, the problem is similar in all essentials to that already solved by every civil community that has a legal constitution. This analogy was pointed out by Kant, but it appeals to practical statesmen just as much as to theorists. In a recent pamphlet Mr. Roosevelt reminds Americans of the times of anarchy in the rapidly growing and turbulent communities out West. "In such communities before there was a regular and fully organised police force there came an

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interval during which the preservation of the peace depended upon the action of a single official, a sheriff or marshal, who, if the law was defied in arrogant fashion, summoned a *posse comitatus* composed of as many armed, thoroughly efficient, law-abiding citizens as was necessary to put a stop to the wrongdoing. Under these conditions each man had to keep himself armed and both able and willing to respond to the call of the peace officer; and, furthermore, if he had a shred of wisdom, he kept himself ready on an emergency to act on his own behalf if the peace officer did not or could not do his duty."[6] This was the way wise men dealt with the situation, while foolish citizens contented themselves with "simply passing resolutions of disarmament without any power back of them."

Our own law still shows traces of these crude relations from which the existing organization of society has sprung. While the protection to be afforded to individuals whose freedom is violated is afforded through the medium of the state, and there is a properly constituted authority to deal with the matter, that authority must be regarded as ultimately deriving its sanction from the collective will of all individuals in the state, and as being in truth only the expression of that will. We must therefore regard the authorities as simply regulating and controlling the natural interference of all to prevent the wrongs of each. Hence anyone is liable to be called upon by the proper authority to assist in taking into custody any person who is resisting arrest, or to help to quell a riot. But, what is more significant, where "the danger is pressing and immediate," it is not even necessary to wait for authority. "Where a felony has been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities" the king's subjects "not only may, but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the

[6] *Mr. Roosevelt Speaks Out*, p. 2.

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people."[7] These considerations by analogy, enable us to see that there is no force in the contention that neutrality should be observed by states so long as there is no international council or league of peace, or other properly constituted authority, to take action; because it is precisely the absence of such an authority that should impose a duty on every state to intervene on its own initiative if rights are clearly being violated.

These inferences seem so obvious that it is strange to find so acute and independent a thinker as Mr. Bertrand Russell, while relying on the same analogy, coming to precisely the opposite conclusion on the really vital point of individual action pending the constitution of a proper controlling authority. Our ultimate aim, he considers, should be "to form a League of Peace, which should undertake, in the event of a dispute, to offer mediation, and, if one party accepted mediation while the other refused it, to throw the whole of its armed support on the side of the party accepting mediation, while, if both parties refused mediation, the League should throw its weight against whichever party proved to be the aggressor. If a sufficient number of nations entered into such a league, they could make aggressive war obviously doomed to failure, and could thereby secure the cessation of war. It is precisely this way that private war has been brought to an end."[8] But he has not much hope of the League being founded in the immediate future. So the vital question concerns what is to be done in the meantime. "English opponents of war will have to be content, at least for a time, with a more humble aim than the creation of a League of Peace. The only policy, in that case, which can secure that England, at any rate, shall not be involved in war, is the policy of strict non-intervention. This involves not only the avoidance of alliances nominally directed to maintaining the balance of power, but also abstention from the attrac-

[7] Per Lord C. J. Tindel, in his charge to the Bristol Grand Jury, on the 2nd Jan. 1832 (5 *Car. & P.* 261 n.).

[8] *War—The Offspring of Fear*, pp. 11, 12.

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tive Palmerstonian attitude of champions of right against oppression. When the Foreign Office desires to enter into a conflict, it can always, by selecting the facts to be revealed, and by inspiring its friends in the press, make our intervention appear as a defence of the oppressed against oppression or attack. The only security against a war-fever created by such methods is a fixed resolve to hold aloof, as the United States are now holding aloof, from any struggle not involving direct attack upon some portion of our Empire."[9]

Let us analyse Mr. Russell's argument. He suggests that if only one side accepted mediation the league should support that side. But, if mediation means submission to arbitration, there is the difficulty which Mr. Russell himself points out in putting the case of Austria against Servia. " The Servians, it is true, were willing to submit to arbitration on this point, but the arbitration must have gone in their favour unless they were to be treated as outside the pale of civilised races."[10] It is strange that in considering the merits of the present war Mr. Russell attaches no importance to a point which he suggests should form a determining principle for armed intervention on the part of all the nations in his League of Peace, whatever the racial or other sympathies of those nations might be. Conversely, it is strange that he should be satisfied that the League of Peace should invariably act on a principle which in the concrete case of the present war he insists is quite indecisive. Then, "if both parties refused mediation, the League should throw its weight against whichever party proved to be the aggressor." This assumes that one side or the other must always be distinctly the aggressor, though the whole object of the pamphlet is to prove the reverse. However, there certainly are cases in which one side is distinctly the aggressor. Is it not clear, then, that pending the formation of the league, states should on their own initiative act in the way they

[9] *Ibid*, p. 13.
[10] *Ibid*, p. 5, 6.

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would be compelled to act if the league were formed? Should they not regard that as done which ought to be done? This is not Mr. Russell's conclusion. Even if the merits of a dispute are perfectly clear, and if there are three or four great powers not involved in the dispute, they must all act in precisely the opposite manner to that in which they would act if the league, which ought to be established, were there to decide what is *ex hypothesi* perfectly clear. It is difficult to understand what can have led Mr. Russell to defend the absurdities of this international red tape. Then, the policy of non-intervention is to secure "that England, at any rate, shall not be involved in war." This assumes that there are no aggressive wars and that England can never be attacked. Yet, a few lines lower down, he says that England must hold aloof from "any struggle not involving direct attack upon some portion of our Empire." The serious contemplation of the possibility of England holding aloof while some other portion of the Empire, say, Ireland or Canada, is being attacked illustrates the peculiar intellectual atmosphere into which members of these peace societies can think themselves when they get together in sufficient numbers. At any rate, England is to avoid all alliances, and, if she is attacked by any combination of powers and asks for intervention on the part of any other states, they are to reply that they cannot do anything until they have gone through the formality of establishing themselves into a league. Without the magic of a league, the nations of the world are to be powerless in the cause of right.

But Mr. Russell is himself obviously conscious that the analogy which he has adopted presses him to a conclusion the very reverse of that which he desires. He admits that the Palmerstonian attitude is attractive. But the objection is that the Foreign Office can so influence the press as always to "make our intervention appear as a defence of the oppressed against oppression or attack." But this contention that the public is completely under the influence of the press, which in turn is completely

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under the influence of the Foreign Office, is in flat contradiction with the assumptions which must underlie Mr. Russell's energetic demand for democratic control. What is the use of democratic control as a substitute for secret diplomacy, if the public are, through the press, themselves controlled by the Foreign Office? But, apart from this it is not unreasonable to assume that a general desire to withstand aggression would influence the Foreign Office of a state that intervened without having any original interest in the dispute. And if such a desire cannot be assumed it cannot be hoped that the nations will ever unite to form a league of peace.

The truly "Great Illusion," which deceives most enthusiasts who devote themselves to the problem of preventing war, is the illusion that if the ultimate solution must be found in an effective international council, the first step to be taken must be to establish the international council, and the next step must be to make it effective. But there would be no difficulty whatever in merely setting up an international council. The problem of making such a council effective is the *whole* problem. The first step should be to produce conditions which will secure active intervention on the part of powers other than those originally interested. The international council would then grow up from the necessities of the case. For the powers referred to would naturally insist on investigating the cause of the dispute, and would desire to confer together with a view to concerted action—it being to all their interest to combine on the same side, so as to make their intervention decisive and bring about as speedy a termination of the war as possible. An international council coming into existence under such conditions would begin by being effective, because its primary purpose would be to determine action. But an international council that came into existence without having its effectiveness secured to it would start as a merely academic body, and could never become anything else.

The real source of the illusion is a confusion between

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the logical and chronological order of things. The advocates of proposals for putting an end to war assume that a complete and perfect scheme could be put into immediate operation. But if, instead of scattering pamphlets broadcast, which only advance arguments that have been urged without effect for over a century, they were to devote their attention to formulating the details of their scheme and drafting the precise terms of the international treaty upon which their council, with requisite functions and powers, is to be established, they would begin to realise the difficulties of the problem.

Such a scheme would have to provide for the action of intervening powers being determined on one or other of two principles. Either action would be made to follow the decision of some judicial tribunal, or it would have to be determined by a majority vote of representatives of the different powers.

In the latter case the different powers would in effect be placed under a federal parliament. But, in the present state of civilization, varying largely with different races, the notion of attempting a "federation of the world" is simply fantastic.

But, if action were made to depend on the decision of a judicial tribunal, the impartiality of the members of the tribunal would have to be above suspicion, and the code of international law to be interpreted and applied would have to be so clear and comprehensive that the court would always be practically unanimous. There seems no reasonable prospect of either of these conditions being fulfilled in the immediate future. As to a thoroughly comprehensive code of international law, it is only necessary to distinguish between the *real* and the *avowed* causes of most international disputes to see that they are frequently concerned with matters which could only be decided by an actual appeal to force, or by concessions in view of threats of force. In such cases a disinterested nation must obviously be allowed either to stand aloof, or at least, to choose its own side.

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In fine, it must be apparent to anyone whose mind has not become unbalanced by the horrors of war, that pressure must be brought to bear on states to intervene individually *on one side or the other* long before any system of international relations can be realised under which it would be practicable for a judicial tribunal or an international council to dictate to them *on which side* they are to intervene, and, further, that even before such pressure could be exerted in sufficient strength to coerce every state to intervene in every dispute on one side or the other, conditions should be so moulded that the pressure is only of sufficient strength to make the more self-respecting and influential powers intervene in cases of the flagrant violation of the principles of international law.

Were this much accomplished, nations would hesitate to indulge in wanton attacks and flout international opinion, in the cynical belief that there exists no international force in the world but that which springs from a mere selfish regard for immediate material interests. The present war is due, more perhaps than anything else, to a gamble on neutrality, in which certain nations have staked everything on a cynical view of humanity. The prevalence of this cynicism has naturally created the fear in every nation that it may at any moment become the object of unprovoked attack, and that in the event of defeat there is no limit to the humiliation to which it may be subjected. When this fear is allayed by the conviction that at least some great powers regard themselves as bound, of their own initiative, to defend and uphold the sacred rights of mankind, the first step will have been taken on the long road that must eventually lead to the establishment of a more ambitious and adequate scheme for making war a continually averted calamity.

JAMES CREED MEREDITH.

DUBLIN, IRELAND.

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WHAT IS REALPOLITIK?

HENRY C. EMERY.

THE injection of another article into the interminable and confused discussion of political ideals involved in the present war would seem first of all to demand an apology to the reader. That disheartening confusion and misunderstanding are the characteristics of a large part of this discussion must be admitted from the outset. The military machine rolls ruthlessly onward, its goal definite, its purposes clear, its efficiency astounding. But philosophy, ethics, and politics, in the face of this stupendous phenomenon seem unable to offer any clear answer as to why it all happened, what it is all about, or what its results will be. There seems to be no ultimate test of the relative worth of the philosophical or political concepts involved or the ethical responsibilities to be assigned to any one nation, or any one statesman. The reason for this is that there are conflicting ideals regarding human duties and national destinies, which cannot be reconciled, it would seem, by any system of philosophy or any process of logical reasoning. The first step toward sanity in the midst of this upheaval must be the recognition that such confusion is inevitable regarding our attitude to-day and that even the "verdict of history" can never do more than settle the problem of actual success or failure on the more material side. So long as history continues to be written there will continue to be deep and sincere differences of opinion regarding this conflict in these philosophical and ethical aspects.

It seems difficult, indeed, whatever one's philosophy may be, not to feel that the theory of pragmatism has been perfectly illustrated in the discussion of the last six months. Philosophical writers of the most distinguished rank have been heard on the subject, but in nearly all cases

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the intellectual conclusions seem to have been primarily determined by the emotional loyalty to one side or the other. We are all familiar with the extreme lengths to which this tendency has extended in Germany and the same seems to be largely true even in such a neutral country as our own. Strangely enough, it is in England that one has to look for a certain degree of philosophical detachment in the discussion of the problems under consideration. It is one of the queer whirligigs of time that in the midst of this conflict of the twentieth century one looks to the Germans for the Drakes, the Hawkins', the Frobishers, whom we associate with English history and English character. To a few Englishmen we look for the philosophic calm in the midst of great national peril, which we associate with a Goethe or a Hegel. To be sure the general opinion in England is perhaps intolerant of such men and the feeling is common that in this crisis they could well exchange philosophers for their old heroes of the sea.

After all, however, this detachment can be attributed to only a few Englishmen and nothing is more illustrative of the difficulty of understanding between the two nations than the common assertions made even by writers of great ability regarding the so-called German *Realpolitik*. We find numberless instances of such definitions as the following: "*Realpolitik* is a new German political theory which teaches that in political affairs the problem of morals does not enter, that might makes right, that the strong must of necessity prey upon the weak in order to increase their strength, that Germany has a destiny superior to that of other races, and that this destiny must be ruthlessly carried out regardless of any past promises, however solemn, or any ethical principles, however binding upon individual action." It is not necessary to quote specific instances of definitions of this nature. In fact they are so common that the above may be taken as the popular understanding of the word *Realpolitik* both in England and in this country. As a matter of fact, however, political realism is nothing new in the history of the world, is far

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from being specifically German and has little in its character to justify any such distorted definition.

In the first place it is essential to distinguish between the thing and the name. If the name was invented by either German statesmen or German professors, the thing itself has been a fact throughout all history and when properly understood must remain a fact for every conscientious statesman. Perhaps the Germans have always suffered from their Adam-and-Eve-like tendency to give formal names to animals or things that have long existed. The judgment to be passed upon actual German policy is a problem quite by itself. It is as unfair, however, to hold them responsible for an existing fact in history, to which they have chosen to give a particular name, as to hold Adam responsible for the nature of the animals which, though named by him, had been created before his time. One reason why the Germans and the Americans of English stock have found it so difficult to understand each other lies in the fact that while German writers have congratulated themselves on having discovered certain facts in historical development and labeled them by means of a particular terminology, they have been accused from this side of having evolved the idea out of their inner consciousness and adopted it for the first time as a working policy.

But after all, what is this *Realpolitik?* The word itself is not found in most standard German dictionaries. If we turn, however, to such a work as Brockhaus' *Konversationslexikon* we find the word *Realpolitiker* defined as follows: "A statesman who in his dealings allows himself to be influenced only by existing circumstances and needs, in contrast to doctrinaire and phrase-making politicians." The term is also discussed in Meyer's *Konversationslexikon* (6th edition 1907) under the general heading *Politik.* It is there pointed out that two distinctions must be made; first the distinction between practical politics and theoretical politics, and secondly the distinction between real politics and ideal politics, or to use a better English phrase,

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between political realism and political idealism. This second distinction is quite different from the first, since political realism and political idealism are both found in the field of practical politics. The former bases itself upon the actual needs of the state at a given time; the latter upon some ethical or political ideal. The writer of the article then goes on to indicate that each of these political concepts can be easily exaggerated. Political realism can easily (but not necessarily) lead to purely materialistic aims on the part of the politician, whereas political idealism can easily lead the politician into the impractical paths of phantasy or pure feeling. The word seems to have been used first of all in a work published in 1853, entitled *Grundsätze der Realpolitik, angewendet auf die staatlichen Zustände Deutschlands.*[1] This work, published anonymously, was written by A. L. von Rochau, a well-known publicist of the time. It is interesting to find the term, and a discussion of the principles of "Realpolitik," appearing at so early a date, and under the authorship of a liberal who was excluded from Berlin by the Manteuffel ministry, and who was somewhat late in recognizing the genius of the statesman who was most successfully to carry out his ideas. The author of this work emphasizes in early chapters the necessity of reckoning with the facts of social forces as they actually exist, holding that such a teaching does not mean "that politics are free of the problem of moral duty, only that there is a limit at which the actual possibility of carrying out such a duty ceases." He then discusses the particular political problems of the time from this point of view, and concludes his final chapter as follows: "As certainly as the spoken or written word is powerless against the living deed; as

[1] I have ventured to say that this is the first use of the word in political literature on the strength of Ladendorf's *Historisches Schlagwörterbuch.* Ladendorf says that the creator of this phrase was Gustav Diezel in a book of the same title as that given above. I can find no record of any such book by Diezel, but the publishers' lists attribute the anonymous work of this date to Rochau, showing a first edition of 1853, a second edition 1859, and a second part 1869. Quotations are from the second edition.

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certainly as acts only yield to acts; so certain is it that no principle, no idea, or no treaty will be sufficient to unite the shattered forces of Germany, but that this can be done only by a dominant force which absorbs all the others."

Whatever one's judgment may be of political realism, one must at least recognize that neither as a theory of politics nor as a basis for political action is it anything distinctly German. It is a universal problem in the political field. Illustrations from American political writing and American political action will be given below. From the specifically German point of view, however, the subject cannot be understood except in the light of German history. The roots of any such conception lie deep in the past. True, it is the attitude of some critics of German ideas that the things which have happened in the past are not a justification for the maintenance of an outworn political conception in a more enlightened and idealistic age. But the psychology of a people is something which is a gradual growth and its concepts are not brought down once and for all by any Moses from a mountain top. The political concepts of the English are the product of a conflict of centuries and they rightly take pride in its history. We, also, on this side of the Atlantic, have inherited not only our political ideas from the mother country but feel the same pride in tracing their roots into the soil of the past. There is obviously no opportunity in this article to trace the course of German history in these regards. Two things, however, simple as they are, must always be kept in mind.

The first is that in the early part of the nineteenth century the German states found themselves the product of generations of petty dynastic quarrels and small state jealousies, while other nations had been marching steadily toward unity of national policy and the growth of economic and political power. Furthermore these other nations had taken it upon themselves to decide the destinies of the German people, whenever crises arose. Whatever arrangements they might wish to make among

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themselves they had always to reckon with the fact that the ambassadors of England, France, and Austria were likely to get together at any moment and put a veto upon their intended program. To be sure this may all be ancient history, but a people, who were for generations subjected to control by outside powers, do not forget this fact easily and cannot be blamed for a very lively consciousness of the fact that independence has been finally achieved. The difficulty which outsiders have in recognizing the influences of such an experience is well represented by a story I recall from boyhood days. An Englishman in this country was urged to show some enthusiasm over our celebration of the 4th of July. To his query as to what it was all about, he was told that that was the day on which we had finally become free and independent. To this his reply was "Ah yes, but we English never were slaves, you know." It is the failure to understand how vivid in the minds of the German people is the achievement of an equal place among the nations, which has made us so unable to understand the meaning of many German phrases in the discussion of recent years, which literally translated have sounded brutally self-assertive. During a discussion in the press regarding the question of Germany's supposed desire for a great career of conquest and world dominion, the *New York Times* asserted in an editorial that the followers of Germany could not get away from the fact that for years a well-known German slogan had been "World dominion or Destruction" (Weltmacht oder Niedergang). It is of course true that this has been a German slogan and, taken literally, the phrase sounds serious enough to the rest of the world, but anyone who really understands German history and German opinion in the last generation knows that the phrase "Weltmacht" does not at all connote world dominion in the sense of the establishment of a Roman empire or even anything resembling the British Empire. It means only that Germany shall be *one* of the world powers; that having achieved finally the right to determine her own fate at home she

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shall also be reckoned with on terms of equality by the other great powers in deciding those great international questions which lie outside the control of any one power. When Professor Coolidge called one of his books "The United States as a World Power," nobody in this country took it to imply a proposed career of conquest on our part, but merely that by force of circumstances we had come into the position where our own interests were evidently involved in problems outside our own borders and that in such cases we should expect to play our part in the determination of such questions.

The second point which should always be kept in mind is that while at the beginning of the nineteenth century Germany was in this position of political and economic dependence, she was giving to the world great philosophers and poets, who stood apart from the petty jealousies of political life and dreamed of a realm of the mind which was to be apart from and above the struggles for political and economic dominion. It was of course a common saying that, while to France belonged the realm of the land and to England the realm of the sea, to Germany belonged the realm of the air. Indeed Germany as a nation seemed to find herself somewhat in the position of the poet in Schiller's well-known poem *Die Theilung der Erde*. When Zeus had said, "Nehmt hin die Welt," and in the scramble for possession the poet had found himself with nothing, he complained to Zeus regarding his unfortunate lot, but was granted, because of his scorn of earthly things, the freedom of heaven instead.

Wenn du im Land der Träume dich verweilet,
  Versetzt der Gott, so hadre nicht mit mir.
Wo warst du denn, als man die Welt getheilet?
  Ich war, sprach der Poet, bei dir.

Mein Auge hing an deinem Angesichte,
  An deines Himmels Harmonie mein Ohr;
Verzeih dem Geiste, der, von deinem Lichte
  Berauscht, das Irdische verlor!

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Was thun? spricht Zeus,—die Welt ist weggegeben,
Der Herbst, die Jagd, der Markt ist nicht mehr mein.
Willst du in meinem Himmel mit mir leben,
So oft du kommst, er soll dir offen sein.

The idealists of Germany, whether poets, philosophers or politicians, were not content, however, to leave entirely alone the problems of political reconstruction, even if they felt themselves superior to what might seem the sordid struggles for power on the part of other nations or the petty rivalries among the German states themselves. Consequently we see in the first half of the nineteenth century noble efforts on the part of German liberals to secure a more united national life and a higher degree of individual freedom. The chief characteristic of these efforts was, however, that they were idealistic and did not reckon with the hard facts of existing German conditions. However great may be our sympathy with the high aims of the so-called "men of '48," it was inevitable (or at least it now seems to have been inevitable) that their efforts should fail because they were trying to establish a system which was antagonistic to the underlying currents of German political life. It was necessary that Germany should work out in the succeeding years a new form of political life and a new set of political conceptions. These were to be based, however, upon realities and not upon phantasies. It was to be a national development in that it was to be a real expression of the German people as a nation as opposed to the purely dynastic conflicts of the earlier period. It was to be *Realpolitik* as against mere family politics. In the second place it was to be German in that it was to express the fundamental political feeling of the German race rather than a mere superimposing of English liberalism on the German states. It was because it remained for the genius of Bismarck to establish a real national life out of these diverse materials, that he is so commonly and so justly considered the most striking example of the political realist. Thus both as reaction against family particularism, and against pure

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idealism, political realism appeared as a much later phenomenon in Germany than in other great nations.[2]

In the development of this new political realism, absolutism in the sense of the control of the people by the ruler was a necessary step, but it was only one step toward a much higher form of absolutism and one which has been frequently misunderstood in this country. In this connection it is interesting to notice how clearly such a thinker as the founder of the socialistic party, Ferdinand Lassalle, recognized the necessity of political realism as a basis for intelligent action. It is true that when Bismarck came into power he disregarded the expressed right of the Prussian Parliament to determine the problem of taxation for the support of the army. The liberals who still drew their conceptions largely from England, stormed and raved and made many brave speeches regarding liberty and the power of the people, but they accomplished nothing. Lassalle, in one address, had already pointed out how unreal was the Prussian constitution, which had been

[2] In this connection it should also be noted that no one can understand the real nature of German feeling without realizing that her historians and political writers have felt that Germany was long ago driven out of her poetical idealism into political realism by the action of other nations. This idea has probably been exaggerated—perhaps has been without any justification—but it has been sincere and even tinged with regret for the necessity of the change. Long before the outbreak of the war such eminent economists as Professor Schmoller had voiced this sentiment, and always with a particular resentment toward the policy of England in former years. In fact, the attitude of such men as to the effect of three centuries of English policy on the change in German policy in the last fiifty years is well expressed in the soliloquy of William Tell as he waited for the tyrant Gessler on the road to Küssnacht:

> "Ich lebte still und harmlos. Das Geschoss
> War auf des Waldes Thiere nur gerichtet,
> Meine Gedanken waren rein von Mord—
> Du hast aus meinem Frieden mich heraus
> Geschreckt, in gährend Drachengift hast du
> Die Milch der frommen Denkart mir verwandelt."

Indeed, in the last twenty years the more impetuous spirits have been heard to whisper the earlier lines:

> "Mach deine Rechnung mit dem Himmel, Vogt,
> Fort musst du, deine Uhr ist abgelaufen."

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granted to the people following the Revolutionary period of '48. After the action of Bismarck, Lassalle in a brilliant address entitled "What Next," jeered at the liberals of the Prussian Diet for attempting to carry on parliamentary procedure at a time when parliamentarism had been trampled under foot. The sensible action for the protesting members of Parliament, he asserted, was to make no more speeches but to refuse to meet altogether. By means of holding sessions and going through the form of protesting against the government's action they were merely giving to the Prussian policy a semblance of popular government at a time when it did not exist. The ministers of the king, he pointed out, were practical men, that is they were political realists. According to him, the only way to fight political realism was by means of political realism, in other words, by adopting such action as would show to the world the *true fact* regarding Prussian politics. It was his belief that by so doing the government might be coerced, since it would not dare to face the world in the nakedness of an absolutism unclothed by even the semblance of parliamentary government. Thus Lassalle was as much a political realist as Bismarck.

It is unfortunate that so few people understand how completely this old form of absolutism has disappeared, although a new form of absolutism has taken its place. We hear very much in these days of the two conflicting political ideals of the Germans and the English as if the one stood for domination of the people by a ruler and the other stood for freedom in the sense of the right of the people to rule for themselves. The real contrast between the German and the English concepts is something entirely different. The popular impression is a misunderstanding not only of the real character of German political conceptions but of English conceptions as well. The real contrast is not the old contrast of the king against the people but the contrast of the government (whether of king or people) against the individual. It is not true that the German ideal is an absolute monarch, whose will

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is law. It is true that the German ideal is an absolute state to which the individual must be subordinated. Since it is convenient to have any general political principle of this kind personified, language is sometimes used by the German emperor or about him by German writers, which is easily misunderstood by those who do not realize that it is not the man who is all powerful but the state which he symbolizes. Indeed it was not so many years ago that the principle was established that the emperor, as an individual, was not allowed to make public utterances on political questions. He can only speak through his minister or with the consent of his minister. Those who try to understand the real nature of government by merely reading the strict letter of the constitution, of course will find nothing of this character in the constitution of Germany, but the fact none the less remains. Mere public opinion was enough to force the establishment of the principle that the emperor could speak only as the mouthpiece of the state and not as an individual.

On the other hand, the characteristic of the English and American forms of government is often equally misunderstood. It is not that the people have thrown off their shackles and have established a government of their own, either by dethroning kings or leaving them without power. It is the glory of the Anglo-Saxon political system that no government (not even the government of the people) is absolute. Strict limits are set to the power of the people itself when acting through organized government. It is the right of the individual against the power of all governments which is most sacredly guarded. Our forefathers were almost as much afraid of oppression by popular government as of oppression by monarchial government. It is the object of Bills of Rights and similar documents to establish certain rights of the individual against any constituted authority, to the end, as is stated in the Massachusetts Constitution of 1780, "that this shall be a government of laws and not of men."

The real distinction between the German and English

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principles of government may be well illustrated by two familiar quotations. There is a German saying of long standing, *Unser König absolut, wenn er unsern Willen thut.* This statement that the king is absolute when he does *our* will might seem at first glance to be a statement of the English rather than the German theory. On the contrary it is strictly German in character in that the absolutism of the king rests upon the support of the people; while it is distinctly un-English in that it admits of an absolute government under any conditions. Contrast with it such a statement as the lines of Tennyson:

> That sober freedom out of which there springs
> Our loyal passion for our temperate kings.

The Englishman does not confer absolute power upon his state or upon his king. He reserves rights to the individual against government in general. It is only when the king (that is the government) is "temperate" in his requirements upon the individual that he receives that loyalty which springs from the individual's "sober freedom."

It is true, as President Hibben has said in a recent article,[3] that it was the German Kant who first emphasized the supreme worth of the individual as the philosophical basis of a system of morals and politics. Here again we have a typical illustration of the difference between theory and the fact. If it was a German who gave the finest expression to the theory, it was a long line of practical Englishmen who established *the fact of political realism* that under their form of government "the individual should be treated as an end and not as a means." This has been the great Anglo-Saxon contribution in the field of politics, not as a political theory but as a political fact. There have been many protests in recent years both in England and in this country against this great principle of individual liberty as compared with the opposing conception of the supreme power of the state and the subordination of the individual in all matters to some ideal of the needs

[3] "The Higher Patriotism," *North American Review*, May, 1915.

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of a personal and living state. In the midst of a great conflict with a nation which represents the opposing conceptions, it is inevitable that there should be a revulsion of feeling and a revival of confidence that this achievement of generations of Englishmen will not be given up as outworn and impracticable. If there is any great philosophical principle at stake it lies here,—in the conviction that a national life based on this principle is not fatally inefficient as against the opposing conception; in the determination that

> The single note
> From that deep chord which Hampden smote
> Shall vibrate to the doom.

Confronted with these two opposing ideals is it not somewhat futile to attempt to pass judgment as to which is the higher or lower of the two? President Hibben has suggested that Germany has been disloyal to her best self in being disloyal to the principle of Kant, but, if disloyal to Kant, she has been loyal to Fichte and Hegel. It is easy to say that our sympathies should always be with the higher ideal, but it is impossible to say in many cases which of two ideals is the higher. Many people assume that the only choice which we have to make is between the relatively gross and material on the one hand and the relatively spiritual on the other. If this were true our choice would indeed be easy. The difficulty comes in choosing between conflicting spiritual claims. The liberty of the individual is indeed worthy of the highest loyalty, but is not devotion to the state and surrender to the needs of the community worthy of an equal loyalty? Between the two we must frequently make our choice. Unfortunately it is difficult for the average man to realize that there is not any simple one best good, but that he must make a choice between goods, which are themselves sometimes conflicting. Most Anglo-Saxons have held up liberty as the *summum bonum* and would subscribe, without much thought, to the statement of a French writer that "Justice is desirable, but is bought at too dear a price if bought at

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the price of liberty." At the same time they will sing fervently in their churches, and with a naive unconsciousness of any discrepancy, the familiar lines of Faber's hymn "There's a kindness in his justice, which is more than liberty."

In the same way the ideal of a united, expanding and powerful national life is one which, while not sordid from any personal point of view, since it may demand the highest sacrifice of the individual, may conflict with concepts of some ideal liberty or some ideal justice in such a way that although the philosopher may develop a basis for reconciliation between them in some distant future, the statesman must face them as conflicting aims between which he must make his choice. In the same way each individual must make his choice between such conflicting ideals in his judgment as to the ultimate wisdom of a statesman's policy. This does not mean, however, that he cannot at the same time recognize that the opposing loyalty is equally conscientious and equally uplifting. The trouble is that so few people are able to remain clear-eyed in seeing what the problem of choices is, and thus frequently a similar confusion of mind arises as already noted in regard to liberty and justice. Many Americans who scorn the theory that all things must be sacrificed to the endurance and growth of the state, and hold that loyalty to some ideal concept of freedom or justice far outweighs any problem of national existence, will yet recite with fervor the lines of Lowell's Ode.

> What were our lives without thee?
> What all our lives to save thee?
> We reck not what we gave thee;
> We do not dare to doubt thee,
> But ask whatever else and we will dare!

If we reckon with the actual affairs of men we must assume that the conflict between different spiritual ideals is a permanent one.

The confusion which exists in the matter of determining which is the "higher" or the more "spiritual" is well

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illlstrated by a recent English writer in an article entitled *The War and Personality in Nations.*[4] He says:

> It is just this incapacity to see that spiritual things matter more than the material things, that the nation as a whole matters more than the individual—which makes the modern extreme Liberal-Labor programme so unattractive and barren of ideals.

This is perhaps a somewhat Teutonic statement from an Englishman at this particular juncture. Its chief interest, however, lies in the assumption that self-sacrificing devotion to the idea of the nation as a whole is something spiritual, while the humanitarian effort to set aside the conflicting aims of particular nations and to work in harmony for the comfort and prosperity of all mankind is something purely material. The dreams of the cosmopolitan humanitarian may be impracticable. They can hardly be said to lack the spiritual quality.

It is not necessary—perhaps it is not even desirable—that all nations should have the same political ideals or remain true to the same political loyalties. There have been throughout history, and it is likely that there will continue to be, great rival systems of politics, of law and of economics, each of which has its admirable and noble features, but which can be maintained only at the cost of certain other things desirable in themselves but in conflict with the necessary character of the system which has been chosen. Thus for instance we have the two great systems of Roman law and English law. The former lays stress upon the duties of man, the latter upon his rights. To many the emphasis upon duty will seem to represent a higher ethical consciousness than the emphasis upon rights, and indeed in many minor matters the English law has in recent years reverted to the doctrine of the Roman law in this regard. At the same time few of us would for a moment admit that the century-long effort to establish the rights of the individual and to make individuals jealous of their rights against the encroach-

[4] Geoffrey Faber in the *Fortnightly Review*, March, *1915*.

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ments either of their neighbors or of governmental authority, had been anything but a noble achievement.

In general, it may be said that political idealism lays stress upon the end to be achieved and that this end is frequently a somewhat blurred, even if lofty beacon. Political realism on the other hand lays stress upon the concrete determination of specific aims, and, what is equally important, reckons with the means necessary for accomplishing such ends. In the words of Kipling it

> Turns a keen untroubled face
> Home to the instant need of things.

I have already said that neither political realism nor political idealism is in itself the monopoly of any one people. There have been idealists and realists throughout every great political movement. These may be found among the philosophical observers of the nation's life and among the statesmen who guide its destinies. Any number of examples might be found in our own history. I shall take only two to illustrate what I mean by *Realpolitik* in American life; one from the academic field, William Graham Sumner, one from actual life, Abraham Lincoln.

Professor Sumner's influence during his lifetime was very great, but it is only from the posthumous collection of many published and unpublished articles that we realize how consistent as well as how powerful was his message. It is indeed well represented in the title given to the last volume, *The Challenge of Facts*. In dealing with problems of international policy, or problems of so-called social politics at home, Professor Sumner was the sturdy champion of the principle that one must reckon with facts as they are. It is interesting to remember that he had a native antagonism to modern German economics, not because it seemed to him materialistic or brutal, but because it seemed sentimental and vague, based on a sham idealism. English economics like English law was individualistic, hard-headed and hard-fisted. It was largely through German influence that American economic writing came to take on a more ethical tinge, and this

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frequently in the mind of such men as Sumner, at the cost of common sense or practicality in fulfillment. His writings reveal on every page the most penetrating analysis of the ideals which were being advocated from the point of view of a realistic recognition of the hard facts of life. In the essay entitled *Do we want Industrial Peace*, he pointed out how inevitable is the element of conflict in the pursuit and attainment of this world's goods, and in a striking passage at the close of that essay he asserts that all the philosophers and all the statesmen of the world cannot overcome it. Perhaps the most interesting illustration of his method is to be found in his essay entitled *Examination of a Noble Sentiment.* This so-called noble sentiment is that every one should have an existence worthy of a human being, that is a *menschenwürdiges Dasein.* Regarding this phrase he says: "It is not a matter of accident that it is stated in German. A noble sentiment often loses poetry and transcendental solemnity to such an extent, when translated into everyday English, that it might seem like begging the question of its truth and value to translate it." In the face of our sympathy for a theoretical conception of this kind, Professor Sumner boldly analyzes what the phrase really means, and comes to a hard-headed conclusion that it means simply having about 50 per cent more of this world's goods than we actually do happen to have. He then analyzes the difficulty of accomplishing this end by any practicable means, and concludes: "A proposition to give everybody an existence worthy of a human being, without a specification of the measures by which it is proposed to do it, is like a proposition to make everybody handsome. Our analysis has therefore shown that this noble sentiment is simply a bathos."

Such passages show his great emphasis upon that concrete determination of ends and that careful examination of means which I have spoken of as the characteristics of political realism. Sumner was probably the most typical and influential of academic writers on politics and

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economics in this country in the nineteenth century,—and he was a political realist.

More important, however, than the academic treatments of politics is the action of statesmen in the face of definite crises. Just as the great crisis of German political life in the nineteenth century was the problem of creating national unity, so the great problem in American political life in the same period was the problem of preserving national unity. It is a commonplace that the softening hand of time does much to blot out the passions and hatreds of earlier conflicts, but it is perhaps well to remember to-day that the mutual recriminations between North and South in our great civil conflict were as passionately bitter and as heedlessly regardless of the other side as are the recriminations between the great belligerents to-day. We each have our individual opinion regarding the American conflict and what our attitude would have been, but we see in quite a different light to-day the motives and the ideals of those who chose differently.

To me the choices made by Stonewall Jackson and George Thomas have always seemed to typify that inevitable difference which must exist among human beings in the choice of even spiritual values. The two men resemble each other in many regards. Each left a record of more continuous success and fewer failures than any other general of his own side. Both were graduates of West Point and soldiers from their youth. Both were men of serious and almost solemn character, fair types of the Christian warrior. Both were born in Virginia. One elected to stand by the nation's flag and what he deemed the all-important task of maintaining the Union. One elected to stand by his state against what he considered the unjustifiable interference with her rights and liberties on the part of a would-be conqueror and oppressor. No one to-day would attempt to set one man against the other as either more conscientious or more clear-eyed in facing his ethical duty.

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But it is not in the choice between sides that the problem of political realism appears in this conflict. It is in the choice of this or that policy on the part of the North at a given time. To the political idealist the one great good to which all else should be sacrificed was the abolition of human slavery. To others (not consciously at least less idealistic than a Garrison or a Greeley) the one all-important thing to which even the problem of slavery must yield was the maintenance of the Union. It was easy for Daniel Webster to say at an earlier date, "Not Liberty first and Union afterwards; but Liberty and Union, now and forever, one and inseparable." It is always easy for the orator or the philosopher to make noble appeals of this character, but it is not always possible for the statesman to carry them out. The time arises when such attempted reconcilement is seen to be a matter of words, and when the conflict in choice becomes inevitable. It is at such time that we are likely to "Wake the drumming guns that have no doubts."

The attitude of Lincoln is of course expressed in the ever-memorable words of his letter to Greeley. He states that his paramount object in this struggle "is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slaves, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could do it by freeing some and leaving others alone, I would also do that." Even as late as August 17, 1864, that is after the Emancipation Proclamation, Lincoln wrote: "If Jefferson Davis wishes for himself or for the benefit of his friends at the North to know what I would do if he were to offer peace and reunion, saying nothing about slavery, let him try me."[5]

Not only has Lincoln's letter to Greeley been quoted innumerable times as the most complete and crushing reply to a critic which the English language affords, but it has been very generally accepted as stating an impreg-

[5] Unfinished Draft of Letter to C. D. Robinson. Letters and State Papers Vol. II, p. 563.

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nable position. It may however be challenged, and is to this day challenged by the political idealists. In a recent discussion, a friend in the certainty of whose ethical judgment I have, I think, greater trust than in that of any other person I know, asserted stoutly that Lincoln, despite his nobility of purpose, had none the less adopted the more ignoble policy, and that since freedom is a higher and more spiritual end to aim at than the maintenance of any national integrity, he should rather have been willing to sacrifice the Union than to sacrifice the slaves. This is a perfectly understandable position, but it is a further illustration of the fact that in the choice between union and freedom we have the problem of choosing between spiritual values, regarding which difference of opinion must always exist. Furthermore, it is impossible by logic or argument for the chooser of either one of these two great ends to convince the other. It is true that Lincoln added that nothing he had said in any way interfered with his personal desire that all people might everywhere be free. There is nothing, however, to indicate that even had he been a dictator, free from his oath to maintain the Constitution, and as he thought similarly bound to maintain the Union, he would have acted otherwise. And every statesman must have many a time been obliged to sacrifice some spiritual good, which made a strong personal appeal to him, for the sake of what he considered a higher obligation. As the poet Masefield has expressed it:

> Artists and kings do what they can, my child,
> Not what they would. It is not easy, dear,
> Working with men, for men are only clay,
> They crumble in the hand, or they betray
> And time goes by, but no results appear.

Whichever attitude one may take toward the action of Lincoln in our own crisis, it is perhaps the most dramatic instance in history illustrative of the contrast between political idealism and political realism. Lincoln was our greatest statesman of the nineteenth century,—and a political realist.

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The objects of this article have been to show, first, the necessity of understanding that the political realist is not one who necessarily stands for sordid aims but recognizes that the statesman must do what he can, not what he would, in order to secure as nearly as possible the concrete results to meet the needs of his particular state; and secondly, that in the choice of the objects to be attained there are inevitably rival claims which cannot in any simple way be determined from the point of view of relative spiritual value. It would seem that the first step toward any satisfactory public opinion or public choice is a clear recognition of what these conflicting ideals are, and of the fact that each is worthy of a devoted loyalty. Let us say with Joubert, "Ayons le coeur et l'esprit hospitables." It will be a hard saying to many that we cannot expect for ages to come any final solution of the question what is the one true road for a nation to follow. But it will be at least a great step forward that the public may be brought to the point of securing for themselves poise and understanding in their judgments, both of their own aims and ideals and of those of other groups or other nations. We may then none the less hope that through the "march of mind" progress shall be made

Till crowds at length be sane and crowns are just.

The great political problem of the past was to make crowns just. To-day injustice from monarchs is nothing to frighten us. A danger that still remains for the future is oppression and injustice from the crowd. The great hope of the future is that crowds may yet become sane.

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LEGAL THEORIES AND SOCIAL SCIENCE.[1]

MORRIS R. COHEN.

A GREAT deal of discussion has arisen within the last decade as to whether the law has kept up with the changing conditions of American life. The discussion in this paper is part of the related but distinct question as to whether American legal thought has adequately kept in touch with the progress of the scientific mode of thought which is now permeating other fields of human endeavor, such as technology, medicine, etc. The complaint that the law is not adequately adapted to present economic and social conditions is by no means peculiar to this country. The European press is full of it. But the complaint that legal thought is behind and altogether out of tune with the general current of scientific thought is peculiarly true of our own country. This is not said in the spirit of querulous fault-finding—a vain form of intellectual self-indulgence that is of no assistance to the philosophic understanding. When one reflects that the essential task of the American people has been the conquest and annexing to civilization of a vast continent, and when one remembers the large share lawyers have had in organizing and carrying on civil government in this continent, as well as advising and helping in the organization of business, one is not inclined to blame them for not having had the opportunity as a class of keeping up with the general level of European thought. We must remember, that until a generation ago we had no real universities in this country. This, however, is no reason why we should now continue that glorified provincialism which confidently supposed that we had nothing to learn from European thought and experience in private and public law.

[1] A paper presented at the thirty-eighth annual meeting of the New York State Bar Association, Buffalo, January 22 and 23, 1915.

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In the introduction to his edition of James Wilson's Law Lectures the present Secretary of the American Academy of Jurisprudence says in effect:—Why should we studyEuropean political science? Have we not advanced far beyond them in the discovery of the ultimate truths of government? Anything they would have to offer us would be like "carrying coals to Newcastle." Yet, a close examination of Wilson's own lectures, which Mr. Andrews rightly holds as one of the sources of the American theory of government, shows that they contain very little that was not directly or indirectly borrowed from Grotius, Burlamaqui and Puffendorf. And not only Wilson but John Adams, Story and Kent, as well as Blackstone, borrowed freely from the Dutch and French writers of the eighteenth century. In a recent number of the Harvard Law Review,[2] Surrogate Fowler warns the American lawyer against the study of European philosophy of law, contending that such study is misleading because American law is different from European law. But, would any reputable geologist contend that we must not read European books on geology because that continent is not as old as our own, or would any self-respecting biologist warn us against reading European books on biology because the flora and fauna of that continent is different from ours? Of all works of vanity, the erection of a dead Chinese wall around the American legal intellect is the vainest. It is certainly ludicrous for us to stand up and shout that we have made the final discovery in the science of law when, as a matter of fact, we are only wearing the cast-off forms of eighteenth-century European thought. Whatever may be true of other things, science like truth ought to be international.

But, what have lawyers to do with European thought or general scientific thought altogether? According to the prevailing theory here, law is law and is in no way dependent on social and philosophical science. The existing law at any time is supposed to be a completed system regulating

[2] June, 1914.

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the whole of life. Judges, assisted by counsel, simply declare what the law is, and to do this a good knowledge of the existing law is sufficient. This view, however, rests on a number of theories, the chief of which are the following:

1. The theory of the division of power as the condition of free government.

2. The theory that the judge's business is to declare the law, never to make or change it.

3. The theory of natural rights, which maintains that man has rights independent of the existence of organized society, and that the only legitimate function of the latter is to protect these rights; and, therefore, a written constitution with a bill of rights, or legal restraints on the legislative power, constitutes the best form of government.

There are many who regard it as impious or unpatriotic to question these principles; but it is not necessary to discuss the justice of this conception of respect for the wisdom of our ancestors, which conception, by the way, is more fully developed by the Chinese. I need only point out that in Western science the successful challenging of first principles is the greatest service we can render. In our own day, physics has been transformed by the fact that men have questioned the principles of the Newtonian mechanics; modern geometry has been developed by disregarding Euclid's axioms; and logic itself has recently found a larger career of scientific usefulness by getting beyond the limitations of Aristotle's assumptions. If loyalty and intelligent appreciation of the works of Newton, Euclid and Aristotle do not preclude questioning their first principles, why should an intelligent appreciation of the works of Marshall, Story, or Kent preclude us from questioning *their* first principles?

I. The Theory of the Separation of Powers.

The prevailing attitude to this theory was well expressed by the late Justice Lurton in an article in the North American Review:[3] "Nearly half a century before our federal

[3] Vol. 193, p. 13.

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constitution emerged, Montesquieu formulated upon unanswerable philosophical and historical considerations the dogma that neither public nor private liberty could be maintained without a division of the legislative, executive, and judicial functions of government."

An examination of Montesquieu's argument[4] shows that the supposed unanswerable philosophical and historical considerations are nothing more than a misinterpretation of the British constitution of his day, and an exaggeration of a very questionable political doctrine of Aristotle.[5] Montesquieu thought that the British constitution embodied such a division of power. As a matter of fact, it did nothing of the kind. The Judges of England were independent of the crown, but not of parliament, and there was certainly no sharp separation even then between the legislature and the executive. Montesquieu was a man of wide but very inaccurate learning—witness his treatment of the Roman law. The exquisite character of his style was responsible for the spread of many a vague and false generalization, but modern political science has got beyond his method of free and easy generalization from one or two inaccurately observed instances. Not only does history show no example of any form of government where the three powers were really sharply separated, but modern political science has learned a general distrust of the naive rationalism which supposes that the complicated facts of government can be readily and sharply divided into air-tight *a priori* compartments.

But you may say: Whatever the origin of the theory of the division of power, it has become embodied in our Federal and State constitutions and is, therefore, no longer a theory but a legal fact. Unfortunately, the situation is not so simple, for not even the might of a written constitution can make a false theory work smoothly. A complete separation of the organs of government, as even the writers of the *Federalist* recognized,[6] would lead to three separate

[4] Esprit des Lois, XI, c. 6.
[5] Pol. VI, c. XIV.
[6] *Federalist*, No. 47.

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attempts at government resulting in anarchy. The framers of the federal constitution gave the president a share in legislation, and one branch of congress a share in the administration (through the power of confirming or rejecting executive appointments), but these exceptions have not been enough. The executive now makes all sorts of laws in the form of departmental regulations; and in such matters as the use of the mail, on which a man's entire business may depend, executive officers exercise almost complete judicial power. On the other hand, our legislators, by controlling appropriations, determine executive policies, while our courts control administrative matters through mandamus proceedings, and administer a large part of the business of the country through receivers. Through the power of determining what is a reasonable return on an investment, Judges practically decide the price of gas, railway rates, etc. As conservative a thinker as Judge Baldwin admits that in no state are the functions of our courts purely judicial.[7]

The result of thus maintaining a theory and not allowing its logical consequences to interfere with the necessities of practice has been to breed a confusion which would be regarded as scandalous in any other science. Thus Story in his Commentaries,[8] after laying it down as "a maxim of vital importance that these powers should be forever kept separate and distinct," goes on later to point out that the true meaning of this maxim is that "the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments." Courts also usually begin by paying homage to this maxim and then quietly disregard it. Thus one court says,[9] "While it is true that the executive, legislative and supreme judicial power of a government ought to be forever separate and distinct, it is also true that the science of government is a practical one," etc.

[7] *The American Judiciary*, p. 22.

[8] *Com. on the Constitution*, I, 364, 368.

[9] *Brown* v. *Turner*, 70 N. C., 93. That necessity takes precedence over the Constitution is shown in *Head* v. *Amoskeag Mfg. Co.*, 113 U. S., 9.

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My friends, the teachers of political science, assure me that the inconsistency of judges in enforcing this and other *a priori* maxims is the only thing that has made some sort of government possible. But on purely logical grounds it is hard to see any reason of preference between the anarchy of a government trying to function with three separate and distinct organs, and the higher lawlessness of courts overruling the Constitution which they profess to guard.

It has been claimed that in practice our party system has abolished the theoretical division of powers just as the extra-legal national convention system has in effect abolished the constitutional provisions for the election of the president. But the confusion of responsibility which all competent observers agree in placing at the root of all the short-comings of our system of government, shows that we have by no means solved the problem of getting rid of the effects of our maxim in practice. Doubtless the party system has accomplished something in the way of funded responsibility, but the extra-legal character of its leadership and control has been an insuperable handicap to its efficiency. The fact that we profess the theory of the separation of powers and of the responsibility of all officers to the people directly, gives strength to the perennial crusades of reformers against "bossism" and makes the position of the party leader unattractive to the type of man who in England or France would aspire to the position of prime minister. The double life of an extra-legal union and legal separation, works as badly in the state as it does in the family.

A recent device to overcome this division of responsibility is that of government by commission. Commissions like the Interstate Commerce Commission, the Wisconsin Industrial Commission, the various public service commissions, boards of health, etc., all really combine limited administrative, legislative and judicial power. They initiate investigations, formulate rules and regulations, and pass on the question whether these rules have been complied with. But while courts have been in the main liberal in

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allowing such commissions to flourish, the fact remains that if the maxim of the division of power and its corollary (that legislative power may not be delegated) were strictly enforced, the life of these commissions would be impossible. As it is they live in a sort of legal twilight.

How we are to be relieved of the difficulties resulting from thus professing a false theory while endeavoring in practice to disregard it, is a problem for the statesman rather than for the philosopher. Seeing that all other civilized nations enjoy the blessings of liberty without professing this tripartite division of powers,[10] the philosopher can view with unconcern the entire abandonment of the theory.

II. The Phonograph Theory of the Judicial Function.

Closely connected with the theory of the division of power, but of greater antiquity is the theory of the judicial function tersely expressed by Senator Root: "It is not within the judge's function or within his power to enlarge or improve or change the law." I am not insensible to the motives which make for this view, according to which the judge is a sort of impersonal phonograph who merely repeats what the law has spoken into him. Social necessities demand that the law should be certain, uniform, and free from the personal bias of the magistrate. Hence the fiction that all judicial decision merely declares a pre-existent law may be in some respects useful. But that the statement in question is not true, and like all fiction leads to confusion, seems to be as demonstrable as any proposition about human affairs is demonstrable. If judges never make any laws, how could the body of rules known as the common law ever have originated or have undergone the changes which it has? The whole history of the common

[10] French publicists frequently use the maxim of the division of power, but only to confine the judiciary to purely private litigation and prevent the civil courts from interfering with administrative matters which are dealt with by special administrative courts. They do not profess to separate the executive from the legislative power.

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law is the history of continuous creation and modification of the law through judicial decision. One need only mention such topics as the law corporations, suretyship, the liability of common carriers, the law of sales, or the law of trade disputes to recall to the minds of lawyers the great changes that have only recently taken place in the law, quite apart from statutory legislation. These changes have been necessitated by the changed conditions of industrial and commercial life and the courts have consciously or unconsciously changed the law accordingly. And even in those branches of the law that do not directly bear on the industrial order, great changes have taken place; in the law of marriage and divorce and in the law of evidence the books of Messrs. Bishop and Wigmore have caused the legal profession to entertain new views on these subjects and the law has changed accordingly. Even in the supposed relatively fixed branches of law, such as property, contracts, equity, criminal, torts, and civil liability, no teacher of the law could adequately present the leading principles of his subject if he left out the leading cases of the past twenty years.

The view that it is not within the functions of the courts to make law, could be maintained only if judges were free to say to the parties before them: Gentlemen, the case you present involves some novel points. The law as a human product is not endowed with omniscience and has not foreseen the situation which you present, hence, I can give no judgment. Go to the legislature and have a law on the subject enacted.—Such a situation, however, would undermine the social value of courts of law. Hence so long as the decision serves as a precedent for others, courts are bound to make law, and so long as they are bound to make law, it is better that they should do so with open eyes rather than wilfully blind themselves to what they are doing by the use of plausible fiction.

In thus showing that Judges do and must make law, I do not, of course, wish to maintain that they are in no wise bound, and can make any law they please.. Every one who

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is engaged in making or creating something is limited by the rules of the process and by the nature of the material. But this is also true of the legislature. If the law made by judges presents a greater continuity with the past, the difference is one of degree rather than of kind. There is a great deal less novelty in legislation than is usually supposed. The amount of legislation in our country seems enormous, but most of it is not legislation at all, but attempts at administration. Careful studies of comparative legislation by Dicey, J. Brown, Charmont, Duguit and others show that so far as legislation does change the substantive law, it is not entirely arbitrary, but does move somehow according to definite directions. The root of the fallacy underlying the phonograph theory of the judicial function consists in ignoring this difference of degree and falling back on the naive rationalistic dilemma: either the law is the creation of men and completely arbitrary, or else it is completely determined by some mysterious non-human agency. And so the theory goes on and supposes that the work of the legislature is entirely arbitrary and that the work of courts is entirely predetermined. But human life does not present us with any instances of absolute fixities or absolute mobilities, any more than physics can present us with immovable bodies or irresistible forces. It is doubtless of the greatest social importance that the arbitrary element in the law, or in certain provinces of it, should be eliminated as far as possible. This, however, in no way justifies the sweeping assumption that the human element can be eliminated altogether. The idea of a government of laws without men—a sort of transcendental automaton which once wound up will go on forever without any human intervention—is one of the vainest illusions which the eighteenth century's enthusiasm for mechanical maxims imposed upon the spirit of men.

So far we have concerned ourselves with the common law; but, you will ask, how about the statute law which is the expression of the determinate will of the legislature? Here surely the business of the judge is to declare what the

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law is, not to make or change it. A closer examination of the situation shows, however, that the theory of complete judicial passivity has as little justification in the realm of statute law as it has in the realm of common law. In the last analysis it is the court's interpretation and application of the meaning of a statute that constitutes the law rather than what the legislature said or actually meant. The theory of judicial passivity in the interpretation of statutes can be defended only on the assumption of legislative omniscience, that it is possible for the legislature to foresee all the various situations that can arise under the act and to make definite provisions for all possible cases. Experience shows that this is not so, but rather that it is impossible for any human body to forsee all possible situations and express its intention with regard to them in unambiguous terms. Hence, if judges are to make workable law out of statutes, they must in effect indulge in a process of supplementary legislation; they must invent a meaning where the legislature, which did not foresee the actual case, had none. As a matter of fact, the will, or even intention of the legislature is often irrelevant in the determination of the meaning of the statute. If I have a doubt of the meaning of a passage in a book, I consider myself fortunate if I can ask the author himself, but for a court to ask the legislature what it meant in a given statute would be absurd. If, while the court is deliberating over the meaning of a statute, the same legislature that enacted it should send to the court an authorized statement of what was its real meaning, such a statement would, under the ruling of Chancellor Kent,[11] be of no force. The courts are concerned not with the actual intention of the legislature, but with what the public, taking all the circumstances into account, should have acted on and should continue to act on. Indeed, we may as well recognize in passing that the intention of the legislature is a more or less fictitious entity. The drafters or framers of a law, the committee that reports it, the majority of the members of the two

[11] *Dash* v. *Van Kleek*, 7 Johns. R., 471, 512.

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houses that for various reasons pass it, and the executive that signs it, may and frequently do have altogether entirely different ideas, or lack of ideas, as to the meaning of the statute they co-operate in passing,—hence the wisdom of the rule which excludes parliamentary debates in the determination of the meaning of the statute.

If we once recognize that no human agency can foresee all future contingencies and adequately provide for them, it becomes clear that if statutes are to be developed into workable laws, a continuous process of supplementary legislation and gradual amendment is necessary. In England and continental countries, which are untroubled by the dogma that legislative power cannot be delegated, a great deal of this supplementary legislation is left to executive officers. In our country all this must be effected by courts under the guise of interpretation. But all legal systems, if they are to be workable, must necessarily leave to the Judge, who has had a chance of seeing how the statute has worked in the concrete case, some power of adjusting the statute to life. Mechanical theories of the judicial function may hinder, but they cannot prevent this process from taking place. The whole history of the law from the Statute De Donis, and the Statute of Uses, or the Statute of Frauds, down to our own Sherman Anti-Trust Law illustrates this process.

It is frequently said, nowadays, that the old methods of equitable interpretation used by common law judges to correct or supplement the abstract generality of the statutes before them, have been abandoned. But, does not the well established rule and practice that an inconvenient and inequitable interpretation is to be avoided, or that the spirit rather than the letter of a statute is to be enforced, amount to the same thing? The extent to which this latter rule is carried can be seen in the fact that courts will in the interests of equitable interpretation change the tense of a statute,[12] interpret the phrase "single man" to include "widows,"[13] or the term "woman" to exclude "married

[12] *Malloy* v. *Chicago & N. W. R. R. Co.*, 109 Wis., 29.

[13] *Silver* v. *Ladd*, 7 Wall., 219.

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woman,"[14] etc. Nothing is more usual than to find statutes construed as operating between certain persons only, or for certain purposes only, when the language of the statute expresses no such limitation.[15] Similarly we find the language of statutes stretched to include things which were not known to the legislator, and could not have been contemplated by him when the statute was passed; for example, when the word "telegraph" is held to cover the telephone invented subsequent to the law in question.

And not only in the interpretation, but also in the application of statutes, the judge's own views of justice and public policy must necessarily play a large part.[16]

If the theory that judges have no share in the making of statute law breaks down, what shall we say of the theory that they have no share in the making of constitutional law? In view of the great uncertainty which always prevails not only among the educated public, but even among the members of the bar as to how our courts of last resort will rule on a question involving, let us say the police power, how can we say that what the court does is simply to declare a pre-existing will of the people? I can understand the theory that after the court has ruled, its ruling should become the will of the people. But the theory that the court always acts as the mouthpiece of a pre-existing definite will of the people, is at variance with all we know of popular psychology. How can we blink at the fact that on most questions involving the constitutionality of laws the majority of the people have no will at all because they have never thought of the matter and have no opinion either way?

Moreover, the distinctions which constitutional issues involve are often of a kind that could not possibly have been present in the minds of the people. It is absurd to maintain that when "the people" in 1789 adopted the Federal Constitution with its commerce clause, they actually in-

[14] *Rex* v. *Harrold*, L. R., 7 Q. B., 36.

[15] See cases quoted by Maxwell, Stat. Interp., 115, 118, 163–168, and W. H. Loyd in 58 Univ. of Pa. Law Review, 76.

[16] For a detailed treatment of these points see my paper on the Process of Judicial Legislation in the *American Law Review*, March, 1914, esp. pp. 178–189.

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tended to give Congress authority to prohibit lotteries (an honorable and established institution in those days), but not to regulate life insurance, to order railway companies to install all sorts of safety appliances, but not to prohibit them from discharging their men for joining trade unions. Secular history gives no support to the view that when the Reconstruction leaders forced through (in effect at the point of the bayonet) the fourteenth amendment to the federal constitution, presumably to protect the civil rights of the negroes, "the people" actually intended that states should not have the rights to prohibit bakers from working more than ten hours per day, but should have the power to prohibit miners from working more than eight hours per day, or that the states should have the power to prohibit women from working more than ten hours a day, but no power to prohibit them from working at night.

The process of adopting a constitution is frequently spoken of as if it were a magical or supernatural procedure. It is, however, subject to all the frailties of human nature. A constitutional convention meets. Various delegates are specialists in specific provisions on which they have definite views and knowledge. These views they will successfully press on those who are specially qualified to deal with other matters. Hence every part of the constitution is the work of relatively few hands. When differences of opinion arise, as in the federal convention, compromises are effected which leave no one completely satisfied. This constitution is then presented to the people and they must vote in most cases either to accept or reject the whole thing. How many of those who vote for approval have had the opportunity to examine carefully every provision and consider all its possible consequences? Moreover, supposing that they do so it does not follow that because they vote for it, it expresses their will, since the voters have no power to select freely the provisions which they approve, and reject those that they do not.

The matter is even worse in case of the federal constitution which in spite of the fact that it begins "We, the

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people," was never adopted by the people directly. It was adopted as a matter of fact by specially elected conventions which in states like Massachusetts required considerable political jockeying not much different from that which characterizes political conventions of our own day. Historians of unquestioned conservatism like McMaster, President Wilson, Ford and others, have shown that the federal constitution was pushed through by a well organized group of urban and wealthy people against the apathy and opposition of the lower agricultural classes. Please understand me. I am not now raising the issue whether our constitutional system has been of benefit to the country or whether it should or should not be continued. I am merely trying to show the fictitious nature of the argument which says that every judicial decision is the expression of the will of the people and that judges have nothing to do with making the law what it is. Surely devotion to one's country, or to the institutions which happen to be established, does not involve that one should adhere to inadequate arguments on their behalf.

The reason why all these arguments must logically break down is that they ultimately involve two contradictory absolutistic conceptions of what is law. One is that the law is the will of the sovereign and the other that law is eternal reason or immutable justice. The notion that whatever pleases the sovereign is law comes to us from the Byzantine period of Roman Law. The eighteenth century writers simply put the people in the place of the absolute emperor. The notion of law as reason comes to us from the Stoic philosophy. Ever since Blackstone acquired his dominance over American legal thought, his method of simply putting these two incompatible notions side by side in the same definition, has prevailed. Now it is possible to construct a doctrine of restraints on the popular will in the interest of justice or reason; and it is also possible to construct a doctrine that what the people want whether it be just or not should prevail as law. But the combination of the two in the theory that law which judges make is

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both just and the will of the people, is a logically impossible feat.

The doctrine that whenever a court declares a legislative enactment unconstitutional it merely declares the will of the people, implies of course that the legislature in the act in question plainly disregarded the will of the people. But the promptness with which, in our state for instance, constitutional decisions are recalled by amendment to the constitution, as for instance *People* v. *Coler*, or the Ives case, shows that the legislature was a better judge of what was the actual will of the people. And if we shift the issue to the time of the adoption of the constitution, the retort can still be made that when the state constitution was adopted, probably not one in ten thousand thought of a Workmen's Compensation Law, but that if the matter had been explained to people then they would in all likelihood have been in favor of it in 1894 as they showed themselves in favor of it in 1912. If any one were to suggest to a court of law that before giving a decision on a constitutional point it should institute an inquiry into the actual will of the people, the suggestion would rightly be treated as absurd. Courts must decide in the interest of justice, and not in accordance with the changing will of the majorities; but if courts did always decide cases in accordance with their view of justice, irrespective of the supposed will of the people, their decision would often, as in the Ives case, have been different.

Out of this dilemma between two masters, justice and the will of the people, our publicists try to escape by drawing a sharp distinction between the capricious will of the majorities as shown in elections and the deliberate solemn will of the people as embodied in constitutions or fundamental laws. This distinction, however, is entirely *a priori* and not at all grounded on fact. There is no actual evidence to show that people are more deliberate and solemn when they adopt a constitution than when they vote for local representatives. As a matter of fact, statistics show that fewer people are interested in voting for or against

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a state constitution than in voting for or against party candidates.

As a historic fact it cannot be denied that the vast body of constitutional law has been made by our courts in accordance with their sense of justice or public policy, and Chief Justice Marshall is rightly regarded as one of the creators of our federal constitution. The whole theory of police power is a judicial convention. The term does not occur in our constitutions, and not one man in ten thousand knows its precise limitations. As our most conservative journalists admit, our constitutional courts are continuous constitutional conventions, except that their decisions do not need ratification by the people. People as a rule are willing to let elected or appointed judges exercise supreme legislative power so long as this power is exercised wisely in accordance with what people feel to be the real public interest. Thus, when our Court of Appeals declared parts of the infamous Levy Primary Bill unconstitutional, there was a general acquiescence; and if a logician had tried to show that there is no single clause in our state constitution necessitating that decision, he would have received scant hearing from the great mass of the voters. People generally do not care much about the question of usurpation of power. They are interested not in the archaeologic problem how a given power arose, but in the practical question, how it is exercised. Forms of government are doubtless important, but modern political science treats them as instruments for the achievement of social ends. The great difficulty with the prevailing legal theory is that these forms are treated entirely on *a priori* grounds altogether apart from the realities of human experience.

The scientific study of law shows that at all times law is developed through judicial decisions, in which judges are aided by counsel and text writers. Legislatures are the commissioners of warring social interests. They can draw up general treaties of peace, but the details have at all times been and must be inserted by the courts, else we should have a constant recurrence to a state of lawlessness.

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When I pointed this out in a recent essay, the deans of some of our largest law schools wrote me that while the contention that judges do have a share in making the law is unanswerable, it is still advisable to keep the fiction of the phonograph theory to prevent the law from becoming more fluid than it already is. But I have an abiding conviction that to recognize the truth and adjust one's self to it, is in the end the easiest and most advisable course. The phonograph theory has bred the mistaken view that the law is a closed, independent system having nothing to do with economic, political, social, or philosophical science. If, however, we recognize that courts are constantly remaking the law then it becomes of the utmost social importance that the law should be made in accordance with the best available information which it is the object of science to supply. Law deals with human affairs, and it is impossible to legislate or make any judgment with regard to them without involving all sorts of assumptions or theories. The issue, therefore, is not between a fixed law on the one hand, and social theories on the other, but between social theories unconsciously assumed and social theories carefully examined and scientifically studied. What provision does our legal system make for the triumph of the more scientific theories? When questions come up involving consideration of the best interest of society, how are judges to decide? At present they decide according to the best of their own knowledge and experience. But this, in the light of the complicated demands on our judiciary, in which all sorts of technical knowledge are involved, can hardly be always adequate. We let arbitrators, who are more or less specialists in the matter, sit for months to determine a single case. Yet we expect judges, with long calendars of all sorts of cases, without power to initiate inquiry and without power to call in experts to advise them, to settle all these matters satisfactorily. In ancient times it was comparatively easy for the court to take judicial notice of the established religion, the established Aristotelian philosophy, and various established customs of the

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realm, but now the various matters that the law tries to regulate are objects of expert study, and these studies are making such rapid progress that only experts can competently keep up with them. Hence, when courts, relying on ancient theories of economics about the value of competition, freedom of contract, private property, etc., assume these theories as true, they become the object of ridicule on the part of those who for good scientific reasons have abandoned the ancient views.

III. The Theory of Natural Rights.

The conflict between the teachings of social science and the results of judicial decision arises almost entirely because of the way the courts interpret the provisions of our Bill of Rights. In the course of the struggle against the claims of the British Parliament, and under the influence of the then fashionable theory of natural law, our Colonial publicists confused certain statutory and common-law rights of Englishmen with the natural rights of man. This led to the insertion of bills of rights into our state and federal constitutions, and hence to the perpetuation of the historically baseless theory that these rights represent the principles of the social compact and are declarative of the principles of all free government. Thus, when all students of history and political science have given up the ancient theories of inalienable natural rights, American courts still speak of the natural right to take property by will, or think of employers as having the natural right to make their employees utterly dependent upon them by paying them in truck or company-store orders, or prohibiting them from joining trade unions, etc.[17] Lawyers like Richard Olney and Roscoe Pound, as well as students of social science, have pointed out the intellectual poverty and narrowness of vision which underlies these conceptions. I can merely add

[17] *Nunemacher* v. *State*, 129 Wis., 190; *State* v. *Goodwill*, 33 W. Va., 179; *Adair* v. *U. S.*, 208 U. S. 161, 175. On the last see the comments of former Secretary of State Olney in the *American Law Review*, 1908.

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that in most cases these decisions show ignorance of what ought to be well known legal history. Thus courts frequently speak of trial by jury as an Anglo-Saxon right, when as a matter of fact it was introduced by the Norman kings to raise more revenue. A slight familiarity with legal history also shows that the free transfer of property by will is a comparatively modern institution in the world's history and was not fully legalized in England before the reign of Henry VIII. The notion of the free labor contract is also an historical myth. There never was a time when the relation between master and servant was not the subject of governmental regulations, except that formerly they were almost invariably and openly in the interests of the employers.

Nor are our courts more fortunate when they leave the realm of *a priori* history and defend their conception of natural rights on ground of justice or public interest. Such maxims as "that government is best which governs least" can be defended only on a doctrinaire mixture of political pessimism with economic optimism—a Calvinistic conception of total depravity of man's political nature and an abounding grace through man's unregulated economic activity. Such a doctrine is, to put it mildly, very questionable. Even the most servile acceptance of the old Manchester theories of *laissez-faire* cannot convince people of the value of freedom of contract where the laborer because of economic pressure has no real freedom. To speak of the laborer making his free contract with a railway company or an organization like the U. S. Steel Co. is to do violence to facts well known to every man in the street. Laborers make no free contracts under these circumstances. They obtain jobs on terms prescribed by the companies. If official proof of this fact be necessary the evidence before the Industrial Commission is ample.

I ought to add that I am not one of those who believe that all government regulation is necessarily just; and I have on various occasions contended that there is an element of truth in the old theories of natural rights if we

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divest them of their individualistic and contractualistic eighteenth-century setting. But I doubt very much whether the terms of our bills of rights are such as to be capable of being developed into definite laws by judicial process. Over a century of judicature has left such phrases as due process, public purposes, equal protection of laws, just compensation, republican form of government, etc., still so vague that we may well ask whether these are not really moral and political maxims of the kind that had better be left to enforcement by legislative process, controlled by enlightened public opinion. Other liberty-loving nations have put bills of rights into their constitutions, but they have regarded them rather as guides to their legislatures. They have as much faith in their legislatures as we have in our courts. Indeed, why should courts alone be deemed worthy of trust? Europeans generally feel it is safer to leave certain matters to the legislature, because the latter has greater resources of information, does not have to make all its legislation retroactive, and being more representative of the different elements of the state, is more responsive to popular need.

To American lawyers the existence of civilized government without legal (*i.e.*, judicial) restraints on the legislature seems an impossibility. But familiarity with the government of England, France, and Switzerland, and indeed with our own liquor legislation, shows that legal restraints are frequently not as effective as political and general moral restraints. Certainly respect for law is not as well developed, nor crime as infrequent, here as it is in England. Life and property are certainly as safe in France and Switzerland as they are in this country. To be at the mercy of legislative majorities seems a horrible nightmare to the American jurist. But why should it be inherently worse than to be at the mercy of judicial majorities? A change of opinion on the part of a single judge after the rehearing in the Income Tax case in 1895 dislocated our whole revenue system, brought about grave crises in government finances, and necessitated a tariff policy different

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from that which would have been followed if the original decision had remained.

Orators, more interested in national edification than in painful accuracy, speak of our form of government by written constitution as the envy of all other peoples, but though the American system has been thoroughly studied abroad, the doctrine of judicial supremacy has not commended itself to other nations. The Germans and Swiss, for instance, copied several features of the federal system, but they did not think it advisable to give the federal courts any such authority as we give ours. Those who know us best, like the English, or the great British self-governing colonies have never evinced the least desire to adopt our method of government by bills of rights interpreted by courts. When the Home Rule Bill for Ireland was considered, it was suggested that something like our bill of rights be inserted; Premier Asquith, then, with all the restraint that the responsible head of a friendly government must have felt, was compelled to point to American experience as an expressive warning against such an attempt.

[The language of the proposed insertion is] "full of ambiguity, abounding in pitfalls and certainly provocative of every kind of frivolous litigation. . . . What is 'equal protection of the laws?' What is 'just compensation?' In everyone of these cases you have adjectives. . . . [Questions raised by those adjectives] are really matters of opinion, bias, or inclination and judgment which cannot be acted on under anything like settled rules of law."[18]

"To introduce the American system," said the *Manchester Guardian* on that occasion, "would choke the courts with litigation (as it does in America). No sooner would a law be enacted than lawyers would grow rich by resisting its enforcement upon constitutional grounds." "All administration would be checked in the American fashion," adds the *London Chronicle*, "while laws were tossed from court to court for years in a vain effort to ascertain whether

[18] Par. Debates, Commons, 1912, XLII p. 2230 f.; the following quotations are from *Current Literature*, Vol. LIII., pp. 629 f.

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or not they need be enforced. The trouble with the constitution of the United States is that nobody has ever been able to find out what it means."

The *London News* contained the following:

"No act of Parliament could be passed which might not be taken before the courts for them to decide whether or not it was constitutional. The courts would be in Ireland, as they are in the United States, the supreme legislators for the whole field of social and economic life. . . . Judges are not trained for that kind of function, and no man who knows the history of the exercise of this function by American judges but will agree that it would erect one of the most galling of all possible tyrannies."

Against the charge that the bills of rights produce too great a strain on the judicial power, that they are essentially vague and productive of an enormous mass of litigation and legal uncertainty, the defenders of our juristic system bring only *a priori* arguments. Thus they argue as if all restraints are inherently good. I doubt, however, whether a single ethical philosopher, or for that matter, anybody else, really considers self-restraint in itself a good. If I have the impulse to say a kind word or do a kind deed, there is nothing admirable about restraining myself. Self-restraint is a good only when applied to impulses which lead to vicious results. There is nothing virtuous about the self-restraint of the villain who subordinates all his better impulses to one vicious purpose, and the same considerations apply to national action. A good deal of the Spartan self-restraint was vicious and destructive of finer manhood. Doubtless hasty action is likely to be regretted and, in general, habits of reflection and deliberation before acting are good, provided we do not carry this deliberation to the extent of losing all opportunity to act. For nations, like individuals, must frequently make up their minds quickly if they are to grasp their opportunity and act at all. If I tie a heavy stone around my neck I shall doubtless not be able to run and, therefore, may save myself from the risk of falling. But neither shall I be able to save myself

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when my house is on fire. I see no reason for assuming an inherent probability that modern legislatures will act too quickly rather than that they will act too slowly. But even so, greater mobility might be considered an advantage, since it enables the legislature to correct mistakes more readily. At any rate, the defenders of the doctrine of constitutional restraints ought to rely more on actual instances where the exercise of constitutional restraints has actually led to wiser and more deliberate legislation. It is notable that, in the two cases which have aroused the most discussion in the last twenty years, the Federal Income Tax decision in 1895 and the Ives case in this state, no one contended that the delay of eighteen years in one case and of four in the other, achieved any socially desirable end. If constitutional restraints are to be justified, they must, like other human works, be justified by their actual fruits in human experience. The only argument from experience that I am familiar with in this connection is the argument from prosperity. Our American system must be the best, it is said, because under it we have prospered as no other nation ever did. But the form of this argument seems too much like the fallacy of *post hoc ergo propter hoc.* Because prosperity has followed the adoption of our peculiar constitutional regime, it does not follow that the latter is the cause. It may well be that the unparalleled abundance of natural resources and our social rather than political democracy is the main cause. Moreover, it is an open question whether a less individualistic theory of government would not have reduced the frightful waste of our natural resources, of which we have only lately become aware. The theory that each man has absolute rights over his own property is not sufficient to compel men to co-operate for the common good, and only by such co-operation can a comprehensive policy, such as irrigation, be carried through. Finally, the argument from past prosperity is a very dangerous one because of its partisan character. It appeals only to those who are satisfied with their share of the prosperity.

The business of a philosopher is well done if he succeeds

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in raising genuine doubts. It is the business of the statesman and the lawyer to resolve these doubts. But though practical matters are beyond my competence, I venture to suggest that the constitutional law of our bills of rights will never receive a fair chance to demonstrate its usefulness until we get rid of the chaos of nearly fifty courts interpreting independently the provisions of the bills of rights of their state constitutions, though the latter are identical in substance with the fourteenth amendment to the federal constitution. The suggestion to strike out the bill of rights from our state constitution sounds like a revolutionary proposal. Yet it is in all seriousness a conservative measure well calculated to strengthen the respect for law in the community. For consider, this proposal in no way endangers the substantive rights now protected by the existing bills of rights in our state constitutions. These are amply protected by the fourteenth amendment to the federal constitution. The presence of the same provision in the state and federal constitutions only serves to produce confusion. Thus, in the Ives case, the question of due process was considered under the state but not under the federal constitution. But if the phrase "due process" has a definite meaning, how can we say that it has a different meaning in the federal constitution than in the state constitution? Moreover, the practical inconvenience arises that a subsequent amendment to the state constitution reopens the whole question in the form: Does such amendment violate the due process clause of the federal constitution? The present situation also puts the courts in an embarrassing situation. If they decide a question on the due process clause of the state instead of the federal constitution, ill-disposed persons may suspect that they are afraid or disinclined to have their decisions reviewed by the Federal Supreme Court. Unless there is any reason why we cannot trust the Federal Supreme Court to enforce our constitutional rights, there seems no reason why these rights should be put in a state constitution which cannot always be reviewed by the federal courts, and thus produce the chaos

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of nearly fifty courts all interpreting the same phrases in different ways. If a uniform system of constitutional law has any value at all, it would seem most advisable that the rights in question should be put in a form which will give the Federal Supreme Court an opportunity to enforce such uniformity.

I cannot conclude, however, without at least mentioning the most fundamental question, viz., whether the lawyer can adequately serve his high calling so long as he regards it as his duty simply to defend the established system? Law is one of the essential arts of civilization. Its business is to create pathways through the primitive jungle of human passions and impulses. Like dykes or river works legal forms provide or safeguard the channels through which the fitful floods of life may usefully pass. Hence the lawyer who regards his work as a liberal profession rather than as a commercial trade, must not be satisfied with merely guarding the works which have been handed over to him. He must study the stream of life and be constantly thinking of ways of improving the containing legal forms. The finest traits of the American spirit have been expressed by Emerson: "Why should we grope among the dry bones of the past, or put the living generation into masquerade out of its faded wardrobe? The sun shines to-day also. There is more wool and flax in the fields. There are new lands, new men, new thoughts. Let us demand our own works and laws and worship." We too are men, and we ought to live not as pall bearers of a dead past but as the creators of a more glorious future. By all means let us be loyal to the past, but above all loyal to the future, to the Kingdom which doth not yet appear.

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BETTING AND INSURANCE.

ALAN J. DORWARD.

EVER since Adam Smith's famous argument against lotteries, that you may see how much the chances are against you by the fact that if you take all the tickets you are sure to lose, philosophers and moralists have declaimed against betting and gambling as being not only immoral but foolish. The statement is sometimes made, however, that insurance is only a form of betting; and as few people would hold that insurance is either immoral or foolish, this statement is made the basis of an argument by *reductio ad absurdum* against the objections to betting.

Now there is no doubt that betting and insurance have something in common; but the difference between them is even more fundamental. To bring out this difference clearly is the main object of this paper.

Let us first state briefly what is the element common to betting and insurance. It appears to be as follows. In both cases I pay out a comparatively small sum on condition that, if a certain event occurs, I shall be paid a comparatively large one. The fact that in the case of a bet the small sum is paid once and for all, while in the case of an insurance it consists of a yearly payment, does not really affect the matter. So far then, betting and insurance are on the same footing. But here the resemblance ends; a closer examination displays only important differences between them, and no further points of resemblance.

The first difference is in the nature of the event on whose occurrence the payment of a large sum becomes due to me. I shall call this *the important event.* Compare the cases of a bet on a horse race and a fire insurance. In the first of these, the important event is the winning of the race by the horse on which I have put my money, in the second it is the burning down of my house. Now the great differ-

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ence between these two events is that the first only affects me if I have betted on the race, while the second affects me gravely whether I have insured or not. If I have not betted at all, it is a matter of comparative indifference to me whether any particular horse wins the race; but the burning down of my house must always be a matter of great importance to me. Thus in the two cases my relation to the important event is a very different one. In this connection it must be noted that if I effect an insurance on some object in which I have no direct interest *e. g.* a ship in which I have no financial interest, the transaction is neither more nor less than a bet on my part. And this I think would be generally admitted. The distinction between such an "insurance" and a normal insurance is quite clear.

The first difference between betting and insurance leads up to a second. We have seen that in the case of an insurance the important event is one in which I must always be interested. The reason of my interest is that the event always consists in a loss of a considerable amount of money or its equivalent. That is to say, I can only gain a large sum from the insurance company if I have already lost an equally large sum is another way. The effect of the insurance is therefore to neutralize any mishap to the object insured. I do not stand to *gain* anything if the important event occurs; I only make sure that I shall not *lose* anything. We may therefore say that when I pay a small sum to an insurance company *I prefer a small certain loss to a large possible loss.*

In making a bet, on the other hand, I create in myself an artificial interest in the object concerned. If the important event does not occur, I have simply lost my money; if it does, I gain a great deal which I should not have gained unless I had betted. What I do is simply to pay out a small amount of money in order to make a large gain possible. Now if we consider that I might have spent in some other way the money I put on the horse, we may say that in making a bet I voluntarily surrender a small certain

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gain. By way of antithesis to what happens in insurance, we may say that in betting *I prefer a large possible gain to a small certain gain.*

But the essential difference in the objects desired by a man in the two cases, as well as in the consequences of his actions, can be brought out even more clearly. Let us slightly change the form of our two statements, and say that in the one case I expend a small sum in order to make a large loss impossible, in the other to make a large gain possible. My object in the first case is as it were to draw a circle round some part of my possessions, and ensure that, as far as possible, no change will take place within that circle. Insurance thus consists entirely in playing for safety, in a desire to preserve the status quo. The state of mind of one who insures is entirely conservative and utterly opposed to the taking of risks; he wants above all things to make sure that no great change will happen in the future. Nothing could be more different from the mental attitude of the gambler, who glories in the excitement aroused by some great change in his fortunes.

These considerations are, I think, sufficient to show how utterly different betting and insurance are; so that the state of mind of a man who bets is not only not the same as, but the very opposite of, the state of mind of one who insures.

So far we have been considering insurance mainly from the side of the man who insures. But some interesting cases occur when we look at an insurance from the side of the company or body which accepts the risk, and it is worth while to mention one of these in passing. If I wish to send money or other articles of value through the post and do not care to take the chances of loss which sometimes, though very rarely, occur in the case of ordinary letters or packages, I can register my letter or packet for a small sum. From my side, this is simply an ordinary insurance; if the thing is lost, the Post Office will make that loss good. But the Post Office does not regard the matter in this light alone; they do not simply accept these terms and let the

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letter take its chance under ordinary conditions. They take special care of that particular letter; their extra trouble being, I suppose, paid for by the small registration fee. Thus I may, if I like, consider my twopence (or whatever the sum may be) as a small extra payment made to the Post Office to recompense them for taking exceptionally good care of that letter. Here the resemblance to a betting transaction has entirely vanished. But of course the other aspect of insurance does always remain; if the letter is lost in spite of all the precautions, the Post Office will pay me its value.

I shall conclude these remarks by pointing out a fact which is sometimes overlooked, namely, that there are occasions when betting or gambling is quite a prudent course of action, even although the chances are against one. Such occasions occur because the things which can be bought with money are not, like a sum of money itself, always divisible into a number of units. Suppose that I have to raise £100 by to-morrow or go to prison; my assets are £5 and I have no hope of raising the money required through friends or in the way of business. My shrewdest course is to take the £5 to a gaming-house (if I can find one) and stake it on a chance which will bring me £100 if I win. As the chances are usually in favour of the bank, they will be something like 21 to 1 against me. That is to say, I shall have one chance in twenty-two of escaping prison; not much, perhaps, but still better than a *certainty* of going to prison, which is my state if I do not gamble. In such circumstances, then, gambling is the only course for a prudent man. It is of course assumed that the importance of escaping or not escaping prison is so great as to be incommensurable with the small material comforts I might procure with my five-pound note.

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PRIVATE PROPERTY AND SOCIAL JUSTICE.[1]

WILLIAM K. WRIGHT.

WHILE perhaps no two contemporary writers who advocate socialism or some other species of collectivism have precisely the same conception of the status of property in the better order which they believe is approaching, the majority of them would probably agree that all, or most, forms of property employed in production are to be owned and operated by "society" or "the people" collectively and not distributively and individually. Whether "society" or "the people" denotes national and municipal governments, or the whole human race viewed as a single organic unit, or the united workers of each separate industry (syndicalism) or collective units composed on some different principle, are matters on which contemporary socialists differ. And, indeed, other features demanded by social justice, such as equality of education and other forms of opportunity, probably seem to some collectivists to be more important than the manner in which property is to be held. In general, however, it is safe to say that not only practically all socialists but also most other prophets of a juster and fairer social order agree that the extensive substitution of collective for individual ownership of property used in production is one of the most fundamental tenets of their faith.

All such reformers, no doubt, would concede that collectively owned property must ever be thriftily managed and be made to increase in bulk from one generation to another, so that progress may continue and humanity go forward. Indeed, the total amount of wealth now in

[1] Portions of this paper were read at the joint meeting of the American and Western Philosophical Associations at the University of Chicago last December. In subsequent revision the writer has profited by criticisms made by various speakers who took part in the discussion of the paper then, as well as by suggestions personally offered by Professor J. E. Creighton.

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existence must be very greatly increased before the condition of the rank and file of humanity could, even under any form of collectivism, be greatly improved. For even in this, perhaps the richest country in the world, the per capita wealth is pitifully small.[2] If there were collective ownership of all property today and absolute equality of opportunity, this would only mean collective poverty for all alike. So in order to make collectivistic ideals realisable at all the total amount of wealth, whether in the form of publicly or privately owned property, must be increased many fold.[3] Society, all must admit, ought in its collective capacity to possess the virtues of the thrifty bourgeois class, and be a successful accumulator of property. Now if society is to become economical and productive in its collective capacity, the individuals of which society is composed must be economical in their private capacities as individuals. A thrifty society made up of individual spendthrifts could no more exist than could a just and benevolent society composed of individuals who are selfish and dishonest in their private relations.

In order, however, that a society might count upon its individual citizens being thrifty in their private capacities as individuals, it would always have to permit and foster to some extent individual ownership of private property. Individual citizens would need to have formed the habit of saving and investing a portion of their incomes, and to have felt the joy that comes from experiencing one's savings yield an increment, whether of profit, interest, or rent. We cannot hope that the property owned by a society collectively (if the society were democratically organized) would be managed economically and rendered productive unless the individual citizens had learned to be thrifty and

[2] Fifteen hundred dollars is the highest estimate I remember having seen. Cf. Spahr, *The Present Distribution of Wealth in the United States* and F. H. Streightoff, *Distribution of Income in the United States*. While written for a different object, these treatises chiefly impress one with the smallness of the total amount of wealth and income possible of distribution.

[3] This holds, even if population were to remain stationary, and *a fortiori*, if it continues to increase.

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productive in the management of private property. It would not be enough to allow each individual citizen the privileges of private property in his hat and shoes and the furnishings of his apartments. Now would it suffice, as Mr. H. G. Wells has suggested,[4] to leave little else than the more highly speculative fields to private investment. For if that were done, since individuals in their private capacities had chiefly learned to use capital in speculation, the collectively owned property would also inevitably be handled recklessly, and much of it wasted. If a society is to be thrifty and productive in the management of publicly owned property, its individual citizens would have to be permitted privately to own income-producing capital, and to learn to increase it through their personal care, prudence, and conservative risk.

Whatever our theory of a social mind or social will, we cannot expect that society collectively organized can possess any virtue[5] which a considerable number of its individual citizens do not possess in their private capacities. And individual citizens cannot possess the virtue of economy unless they have the opportunity to acquire it. This contention will, I believe, be confirmed by a consideration of the conditions under which publicly owned property is managed successfully today. Germany and Switzerland are constantly cited by collectivists as countries where large productive enterprises are publicly owned and successfully managed. But in both countries the government is in the control of the property-owning classes: in Germany because of the peculiar electoral system, and for

[4] *New Worlds for Old*, Chap. VII. Mr. Wells is extremely indefinite. He recognizes that *some* property should be left to private ownership, but he is guided by no psychological principle such as that advanced in this paper, and is inclined to assign the speculative fields to private ownership.

[5] Such terms as "virtue," "instinct," "sentiment," "imitation" and "suggestion" are used throughout this paper in technical senses, derived originally from Dr. William McDougall (*An Introduction to Social Psychology*) and Mr. Alex. F. Shand (*Foundations of Character*) and applied by the author to ethical problems. Cf. especially "Ethical Objectivity in the Light of Social Psychology" (*Philosophical Review* Vol. XXII, pp. 395–409) and "The Evolution of Values from Instincts" (*Idem*, Vol. XXIV, pp. 165–183).

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other reasons, in Switzerland because of the very general ownership of private property. On the other hand, in American cities, where the majority of voters are not property holders and taxpayers, publicly owned property is as a rule sadly wasted and mismanaged.

Before proceeding to develop the consequences of the position at which we have now arrived, it will be necessary to forestall a variety of objections all of which arise out of a misunderstanding of the relation of the laws of imitation and suggestion to the more basic springs of human action. For instance, an objector might say: "Your argument assumes that an individual must exercise a virtue in a private capacity if he is to exercise it in a public capacity, that he must be personally thrifty in order to appreciate and exercise public thrift. But this is not necessarily the case, for some bank cashiers are economical in the management of the funds of their banks and careless in their private expenses, and some physicians are careful of the health of their patients and careless of their own." Now I am quite willing to admit that a few such bank cashiers and physicians exist. The reason is, that through imitation and suggestion individuals occasionally display the outward manifestations of a virtue or other mental trait before the public, while the virtue really forms no integral part of their characters and does not govern their private conduct. The standards of their colleagues have been adopted by such men through imitation and suggestion and in conformity to the requirements of their employers and patrons (stockholders and depositors and patients) who really do in some measure possess the virtues concerned. If nobody were thrifty there would be no demand for banks; if nobody cared for his health, there would be no call for physicians. Such exceptional instances as this objection advances can only exist because they are exceptions. And I think that we feel some suspicion of such men if we happen to know the inconsistency between their public professions and their private conduct; we feel that their characters are not thoroughly stable and dependable.

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Unless a very considerable number of persons in a community possessed and exercised a virtue in their own right, quite apart from influences of imitation and suggestion, even an exceptional few of the rest would not display some of the outward characteristics of the virtue through imitation of them.

A somewhat similar objection is, that in our modern society persons are led to accumulate property by a great many other causes besides what I have called the virtue of economy. Very much accumulation is due to the desire for self-display, to exercise "the will for power," to be esteemed successful; and, indeed, much accumulation is due simply to the sheer inertia and incapacity of many of the very wealthy to spend all of their huge incomes, which in consequence automatically increase already swollen fortunes.[6] In reply to this, I would say, first, that if all property were publicly owned all of these causes (except possibly the last) mentioned in the objection would cease to operate. Private property must exist to call these motives into operation, and without its existence they would disappear. And, furthermore, it seems to me that these inducements alone would be insufficient, even in the present capitalistic order, to bring very much new wealth into existence. Persons who accumulate property for these reasons do so in more or less direct imitation of those who are thrifty. The tendency to accumulate property begins with persons whose strong acquisitive instincts have crystallized into a sentiment or virtue of economy, and only later is the tendency propagated to other persons who are economical in some phases of their conduct and not in others and who do not directly appreciate the virtue itself. It must be remembered that imitation and suggestion are never ultimate explanations of social phenomena. They are only the modes in which mental traits possessed by some persons in a marked degree become propagated to others who are naturally less susceptible to them. We have national panics and epidemics of rage only because of

[6] Cf. J. A. Hobson, *Work and Wealth*, Chap. VIII.

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the existence of individuals who possess the instincts of fear and anger in aggravated form, and because of the law that such panics and rages can be propagated from them to others. This sort of contagion is always very instable in its influence and duration. No secure foundation for national thrift in the conservation of public wealth could be furnished by imitation and suggestion, or collective inertia in the expenditure of a large public income. The majority of citizens must really possess the virtue of economy as an integral part of their characters if the society of which they are members is to be economical.

There are only two ways in which it would be psychologically possible for society to hope to manage large amounts of publicly owned property with marked success. The first and simplest would be to restrict the political power to those who are now property holders and so have demonstrated that they possess the virtue of economy. Plutocratic socialisms have existed in the past and have been successful in maintaining themselves and promoting the welfare of the ruling class. Evidently, however, a socialism of this sort is desired by no one today, at least in America. The other way would be more difficult, but I believe ultimately feasible. It would be to enable all individual adult citizens to become owners of private property.

A detailed exposition of the various ways and means by which this latter plan might be effected belongs to another province than that of the philosophical student. It is necessary, however, to touch briefly upon this side of the matter in order to make it clear that what I am advocating lies within the range of practical possibilities. It is really much more practical and less utopian than most radical programs. In the first place, if workers are to be enabled to become small capitalists, their wages must become large enough so that a margin will exist between the expenditures necessary to maintain a reasonable standard of living and their total incomes. Their standard of living of course must not be lowered. In the second place, inducements

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must be offered working men to save and to invest this margin. In order to create such a margin where it does not now exist a minimum wage scale in some industries will probably be found desirable, and in others laws and judicial procedure may need to be modified so as to increase the relative strength of labor unions in contests with their employers for higher wages; but as a rule probably the sounder economic course will be to give better opportunities for industrial training to the workingmen so as to increase their productiveness and efficiency. The margin doubtless already exists in some of the skilled occupations. In order to induce the workers to save and to invest this margin where it now exists or in the future is made to exist, secure investments at a fair rate of interest must be made accessible to small savers. In view of the fact that a very large portion of the wealth of the country is now held by corporations, their debentures, first subjected to rigid governmental inspection to assure their soundness, ought to be issued in small denominations and so made accessible. In France it is said that many of the best bond issues have for some years been offered in denominations of five hundred francs. The Land Bank about to be organized in New York state is expected to offer interest-bearing notes to the general public in very small denominations—perhaps as low as twenty dollars, and at the same time, through long-time loans to make it easier for tenant farmers to acquire ownership of their farms. Most immigrants to the United States possess the virtue of thrift upon their arrival, and if safe investments were made accessible to them it would be easy to induce them to save and to invest and so to become small capitalists.

What I am urging is not only entirely in harmony with many of the collectivistic proposals urged by socialists and progressives at the present time, but indicates a way by which such reforms could be made to appear more practicable. By all means let us insure workers against sickness, accident, unemployment, old age, and death. It is now objected that such insurance projects are undesirable; first,

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because they would remove the chief incentives to industry and economy; secondly, because they are too costly and would necessitate excessive burdens of taxation. But if the opportunity to make safe investments yielding fair interest is offered to workingmen, they will receive a new and substantial inducement to become industrious and economical, and the first objection will no longer hold. Under these circumstances workingmen will learn to regard their labor as an insurable form of productive capital, and acquire increased confidence and self-respect. Fire insurance increases rather than diminishes the thrift of small property holders; labor insurance of laborers who are small capitalists will have a similar effect. The second objection also will no longer hold. For, with a larger proportion of the members of society saving portions of their incomes and bringing new capital into existence, more can be done in the way of social amelioration without increasing present rates of taxation; and at the same time a society composed of thrifty citizens will itself be more efficient in managing collectively owned enterprises and causing them to earn profits that would be available for such purposes.

If such a program as has been suggested were to be carried out it might even ultimately become feasible that society should not only, as it now does, save every one from actual starvation, but also relieve every one from poverty, and provide all children with the best education suited to their talents, supporting them entirely during their schooling when necessary. Such extreme measures of social equality would appear to be psychologically feasible *after* a considerable portion of the laboring classes had once formed a taste for the accumulation of income producing capital and for the luxuries which its ownership would afford them in addition to their wages and the minimum of comfort guaranteed by society to every one. For under such conditions as I have indicated there would be the same stimulus to save and become a small capitalist that there now is to work and avoid pauperism. Indeed I am utopian enough to imagine that it might even become a slight social

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disgrace for an able-bodied workingman *not* to own some interest-bearing securities that he had acquired by savings from his wages!

It is therefore clear that very many of the ways in which socialists hope to benefit the lot of humanity can be ultimately attained, if, while society accumulates and operates an increased amount of productive property, individuals are induced in increasing numbers to accumulate more private wealth also.

The facts of moral evolution as set forth by historians of morality and social psychologists will be found to support this conclusion. Such writers generally agree that the virtues of justice and benevolence were at first only practices within small personal groups. Sutherland, Westermarck, and McDougall attribute the origin of altruism to the parental instinct. And while Professor Graham Wallas[7] may be right in objecting that a certain amount of kindly feeling is probably instinctively felt apart from the operation of the parental instinct or any of its modifications, still, since all instincts are at first fugitive in their attachment to objects no deep and lasting habit or sentiment of kindliness could have developed toward strangers, since they are not continuous objects of stimulation sufficient to build up sentiments. So, however much instinctive kindly emotions toward those outside family or other close and familiar relations may have been occasionally felt, instinctive altruism could not have developed into a lasting sentiment without the support of the family instincts.

The advance of social reform, dependent as it is upon the increased accumulation of private as well as of public property, is somewhat endangered by some arguments and proposals, advanced by well meaning but not sufficiently reflective radicals. Most of the elementary text-books in logic give as an instance of fallacious reasoning attributed to Malthus the proposal that, in view of the fact that the owners of cows are industrious, the poor could be made industrious by presenting them with cows. The fallacy of

[7] *The Great Society*, pp. 140–149.

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course is that of mistaking an effect for a cause, and supposing that thrift itself could be induced by the acquisition in some other way of the effects of thrift. No one today would be guilty of this fallacy in so crude a form. But the reported hope of the Italian syndicalists that by a general strike or revolution the industries in which laborers are now employed may be made to pass into their ownership, and that thereafter the new owners of the industries will operate them economically involves the same fallacy. The hope of syndicalists that workmen may ultimately come to own, or at least largely to share in the ownership, of the factories in which they are employed is a hope in which, for one, I heartily share. But if this is ever brought about, it will be by the workers gradually, by their own thrift and industry and the management of smaller amounts of property, having acquired the skill and self-control to manage the extensive instruments of production used in their own industries. In a similar way, if municipalities or the nation as a whole are to own and successfully operate public utilities on a large scale, these utilities should be bought and paid for by capital accumulated through public management. An inexperienced commonwealth that precipitately took over railways, mines, or factories by confiscation or expropriation, or paid for them with the proceeds of heavy taxes on inheritances or unearned increments in land would be utterly unable to operate them economically. When reformers favor the acquisition of public utilities through such procedures, and not through the discipline of earning profits by management itself, they are guilty of the fallacy of the cows in a subtler form.[8]

Other agitation that is psychologically as well as economically pernicious is the indiscriminating attack upon all forms of profit, rent, and interest as exploitation of the laboring classes. If, as I have been urging, the great desideratum is to bring more capital into existence in order that there may be more wealth to be distributed and con-

[8] Even so generally reasonable writers as Spargo and Arner (*Elements of Socialism*) do not realize this. (Cf. ch. xxiv.)

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sumed, we must not cast aspersions upon the part performed by capital in production or deny to capital its rewards. On the other hand, we should enable the laborers by their own efforts to become capitalists, so that the incomes which they now receive from their labor may be supplemented by incomes which they will receive as capitalists. In that manner present inequalities may be largely reduced, and the proportionate amount of the fruits of production now received by the working classes may be greatly increased without tampering in any way with property rights. The rights of property need to be made secure—and extended to assure security to the small investor—in order to afford to every adult human being the opportunity to develop his personality by becoming an owner of income-producing property.

A socialistic writer who displays keen psychological and philosophical insight is Mr. William English Walling.[9] With very many of Mr. Walling's conceptions, including his acceptance of pragmatism, the present writer finds himself in hearty concord. Like Mr. Walling, he believes that we are entering an epoch in which, at the same time that more wealth is becoming publicly owned, small capitalists are coming into general control of conditions. Like Mr. Walling, he also believes that this change is effecting a general improvement of conditions, not only for the small capitalist class, but also for the working classes. But, unlike Mr. Walling, he does not believe that the era of small capitalism will ever need to be superseded in its turn by eras of a radically different character. It seems to him that Mr. Walling has assumed this last through a failure to contemplate the possibility that during the course of the era of small capitalism all may become small capitalists. Every worker may be enabled by his industry and thrift to become an enjoyer of income from his capital as well as from his wages. One suspects that Mr. Walling has failed to take this possibility into account because he has not wholly emancipated himself from the fallacy that

[9] *Socialism As It Is; The Larger Aspects of Socialism; Progressivism and After.*

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capital necessarily owes its existence to exploitation, and that, so long as there are small capitalists, there must also be a propertyless class whom they are exploiting.

Perhaps another reason why Mr. Walling has not perceived the possibility of the outcome for which this paper contends is that he has not wholly assimilated one of the consequences of the pragmatism which he professes—a view, by the way, that Bergson and many idealists also hold—*viz.*, that the future is not a mere repetition of the past, but an enlargement of it in every way, and that consciousness exercises a creative function in this process of growth. Pragmatism, as well as most forms of idealism, teaches that reality is no closed or fixed system of absolute entities that cannot become enlarged both quantitatively and qualitatively; the world is rather the product of creative effort, and is largely what we make it. It seems to me that it follows from this that property, like other aspects of human personality, is not a fixed quantity. There is almost no limit to the amount of property that can be brought into existence through individual and collective efforts. In order that the present propertyless classes may be benefited it is not necessary that they should, through public expropriation of some sort, come into the possession of any property *now* owned by individuals (without fully compensating the present owners with other income-producing property). All that is necessary is that society as a whole, and the propertyless as individuals, should create *new* wealth, in addition to that now in existence, and this they can readily learn to do under juster social arrangements. If the possible amount of wealth were a fixed quantity, the only way that the "have not's" could acquire any of it would be at the expense of the "have's." The "class war" would follow as a corollary. But full acceptance of pragmatism should lead to the recognition of still "larger aspects of socialism" than those set forth in Mr. Walling's admirable volume of that title. Pragmatism should emancipate socialists from superstitions of "class war," of "class consciousness," of capital as necessarily the fruit

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of exploitation, of rent, profit, and interest as necessarily immoral, and of other absolutistic conceptions that are now no longer tenable in view of the larger interpretations of reality, and the place of human personality in it.[10]

It is possible to state a portion of the argument of this paper so as to develop some additional ethical implications. Every reformer, we may suppose, desires society to be moral and rational in its collective capacity. The general will must be firm and self-controlled, and must plan for future good, unswayed by momentary passions. Only by being thoroughly rational can society be free. Hegel and Green would state this idea in metaphysical terms; Professor Graham Wallas[11] would say more simply that thought must be the guiding force of our society. The decisions of society must be the outcome of rational, self-controlled, farsighted deliberation. But no democratic society can possess such a character as this implies unless the majority of its citizens in their private capacities possess strong, self-controlled characters. Now an important way—of course not the only one—in which an individual person can acquire foresight, self-control, and powers of reasoned calculation and learn not to allow his emotions and passing desires to sway his decisions is in the management of private property. The management of a certain and calculable income from a salary of course in part, but I think only in part, serves the same function in this respect as private property.

I have stated the argument throughout this paper with

[10] Mr. Walling, to be sure, seems to see this dimly. Hence his assertion that socialism is not a "class struggle," but an "anti-class struggle." (*Larger Aspects of Socialism*, p. xiii.) But in the same breath he insists in italics that "*socialism is a struggle of those who have less, against those who have more, than equal opportunity would afford*," and the general account in *Progressivism and After* characterizes social evolution as a warfare against privileged classes, and gives the general impression that those who have less than equal opportunity are to benefit chiefly through heavy taxation of those who have more, and through the abolition of the rights of bequest and inheritance, and not through themselves learning to produce and accumulate new wealth on their own account.

[11] *The Great Society*, Chapters X, XI.

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reference chiefly to the laboring classes. It applies with even more force to members of the intellectual classes. Would not society be greatly benefited if its intellectual and moral leaders were paid large enough salaries, so that, without lowering the standard of living requisite for efficiency in their callings, they were enabled to save and to accumulate property, and so to make their personalities more concrete and social? This is clearly true of teachers. The undesirability of the corps of instructors in an educational institution being wholly or chiefly celibates is often remarked. Are not the disadvantages of a propertyless faculty equally serious? The low moral standards of the modern business world are frequently censured by moralists. But is not the low level of business morality—in those respects in which it really is low, it is high in others—due to the fact that the moral leaders of our time are almost completely ignorant of business conditions, and so are unable to offer any really practical suggestions? The propertyless moralist and clergyman are too ignorant to do more than in a wholesale manner to denounce the love of money as the root of all evil, and there is nothing at all constructive about this. No wonder business men often conclude that religion and morality bear no relation to business. Our commercial and industrial morality can only become uplifted and enlightened when the prophets of our times shall have personal acquaintance with the acquirement and investment of property.

"Private property is the unity of life in its external or material form; the result of past dealing with the material world, and the possibility of future dealing with it; the general or universal means of possible action and expression corresponding to the moral self that looks before and after, as opposed to the momentary wants of a child or animal."[12] If, therefore, a social reformer thinks that society in its collective capacity ought to possess "a moral self that looks before and after" he should realize that the best way to attain this is to promote a general ownership

[12] B. Bosanquet, *Aspects of the Social Problem*, p. 311.

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of private property among individual citizens. In this connection the rights of inheritance and bequest are also, within limits, to be insisted upon as expressions of the moral personalities of individuals. A man's wife, children, and near kin are members of his moral self, and his property ought to pass to them undiminished by *excessive* death duties. Society can only be expected to be morally capable of conserving publicly owned wealth and of passing it increased in bulk to the next generation on condition that the individual citizens of which it is composed are in their private capacities endeavoring to accumulate property and to pass it on to their descendants.

Perhaps, however, some one may still object that although certain virtues attend the ownership of private property, this institution none the less tends to render men cold, hard, greedy, avaricious, and selfish, and that it is therefore on the whole antagonistic to the development of the larger moral life. Private ownership should therefore ultimately be abolished in favor of exclusive public ownership. This argument, which has never been more trenchantly advanced than in the *Republic* of Plato, has been refuted in the *Politics* of Aristotle. Plato, more logical than many modern detractors of property, saw that precisely the same objections apply to the monogamous family, which also appears to narrow the range of interests and sympathies of its members, and to make them hard, cold, selfish, and indifferent to the outside world. Plato therefore thought that the guardians, if deprived of monogamous family life, would indiscriminately love all the children of the next generation as if they were their own; and, in like manner, that, deprived of private possessions, they would disinterestedly conserve the public property as if it were their own. The spirit of Aristotle's refutation, restated in a modern psychological manner, is, that those who have no intimate personal relationship with a few children cannot acquire the parental virtues at all, and those who have no property of their own cannot acquire the virtue of economy. On the other hand, through moral

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education we may lead parents and others to extend to children in general a virtue which they have first acquired with reference to the children in their immediate care, and through moral education we may likewise lead capitalists to extend the virtue of economy to publicly owned property. The Platonic method of securing disinterested love of society on the part of its guardians was given a partial trial in the case of the celibate, propertyless monks of the middle ages, and proved a failure. The Aristotelian method rests upon a sounder psychology, and is more in harmony with the modern spirit. Let us grant that individual owners of private property, like individual fathers of families, are often too narrow in the range of their sympathies, and hence become hard and cold toward matters of public good. The remedy for this is to lead them to extend their range of interest to the property held by society as a whole. Once a virtue has been brought into existence within a narrow range, its scope may gradually become extended with further development. But a virtue can only arise and begin its development within a narrow personal circle. All our knowledge of moral evolution abundantly shows this to be the case.

We may therefore conclude that the aims of social justice and the right to private property are compatible. Only that society could be called truly social in which every individual enjoyed free opportunity to develop his personality in every important respect, including a liberal education and the acquisition of private income-producing property.

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MARRIAGE AND PARENTHOOD—A DISTINCTION.

ELSIE CLEWS PARSONS.

THAT parenthood is the central fact in the theory of the family none will nowadays dispute; that it should be the only fact, that family and parenthood should be convertible terms, few will admit. And yet until these few become many I question if there be any way out of the maze in which our theories of parenthood and of marriage, particularly marriage, are lost. I mean that until marriage and parenthood get into the social consciousness as distinct and separable facts, our ethics—and our conduct—will be uncertain, confused, and tragical beyond need.

There have been several reasons for this confusing identification in theory of the facts of marriage and parenthood. Any habitual association is apt to seem to us a necessary association. Only owners of apartment houses or members of boards of education need be reminded that marriage and parenthood form one of these habitual associations. Moreover their association in practice in our type of family, the monogamous simple family of two generations, is particularly striking, more striking than in the polygamous family or in the compound family of three generations. There are other factors confirming the identification. Since because of certain economic and religious traditions I need not particularize, our unmarried mothers and their children are severely penalized, the idea of parenthood divorced from marriage is repugnant and disconcerting. Again, so disquieting and distressing is passionate love in itself to those who see it and at times to those who feel it that it is ever subject to restrictions or inhibitions of all kinds. Many of these inhibitions are ideas about its nature. The idea that it is weakening or demoralizing is such an idea, an idea that has been rooted deep among us by our religion. In particular, Christianity

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at one time worked up the idea of the evil intrinsic in passion into the theory that passion had to justify itself through the begetting or bearing of offspring.

This special dogma we have rejected. We have even begun to question the theory back of it, pleading that although passion may not under all circumstances be its own justification, it does not always need an extraneous justification. We have begun to question other traditions. Are the elders, we ask, they who feel least the impulses of sex, the fittest to regulate them? Nor does the influence of the habitual association appear to be quite as controlling among us as once it was. As a matter of fact, the prevalence of childless marriage is breaking down the particular association we are discussing, marriage and parenthood. Furthermore, although the unmarried mother is still penalized, from our devotion to childhood at large the illegitimate child has become a beneficiary.

And so I venture to predict the time when in social theory, but mind you not necessarily in actuality, marriage and parenthood will be divorced. Then marriage, or shall we say any relation of sex, may be considered a private matter in which the state has no interest and no voice. Parenthood on the other hand will be accounted of public significance and of far greater public concern than it is to-day. Then, instead of a marriage registry and a divorce court we may have a parent's registry and a parent's court; instead of a marriage certificate, a parent's certificate (already in embryo in the eugenic certificate); instead of matrimonial property laws, parent contract law.

Parent contract sounds, I admit, rather fanciful, and so a word or two about its commonsense aspect. Under our present family system, a mixture of custom and law, the state interferes little if at all in family affairs until they are in a mess, in far too much of a mess to be straightened out by the clumsy mechanism of law. (Anyone who has ever had anything to do with a divorce trial is quite well aware of this.) The state does undertake to say in a general way that a parent, primarily a father, in his default a

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mother, should be responsible for the support and education of a minor child. To standardize that support and education the state has never undertaken, nor has it undertaken, except in the most uncertain terms, to regulate the four-sided relation the existence of a child presupposes, a relation between its mother, its father, society, and the child itself. In the new body of parental law one foresees as the outcome of changes now taking place in public opinion, this four-sided relationship is going to be worked out. But the plan I am suggesting is merely a frame for our theory, not a legislative program. Legislation does not proceed by programs.

In the parent's registry I see the expectant parents, both or either—whether both or only one, or if only one, which one, are questions of indifference in law—I see parents legally bound to enter into a contract [1] with the state to bring up the child according to the standardized minimum requirements formulated by the state for the good of its future citizen. I also see a provision made in this parent's contract for the support of the mother of the child during pregnancy and for a given period after childbirth. This provision may be made by the expectant mother herself, by the expectant father, or by the state. The residence and control of the child will also be contracted for. In brief, I see the same provisions made amicably and with foresight before the birth of the child that are now made in many cases in the divorce court —with friction and pain.

It seems hardly necessary to go into the details of the legal methods to be adopted by the state to enforce the parent's contract, or into the ways the pressure of public opinion would work on the irresponsible parent, the parent who broke his or her contract and shifted or tried to shift his or her responsibility upon the other parent or upon the state. Nor need I forestall the ridicule sure to greet any idea of anticipating parenthood except through the implica-

[1] I do not use the term contract in its legal sense; the lawyer will tell me I am referring here to the police powers of the state.

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tions of a wedding, ridicule that will persist until the momentous and comparatively new knowledge of how to regulate conception has acquired social recognition. I would like to point out, in conclusion, however, that the machinery of a parent's registry and a parent's court is much less compulsory and in some ways much less radical in character than may at first appear. It leaves a man and a woman free to co-operate in a family life. It also leaves either man or woman free not to co-operate. Both systems are worked now. All it does is to help the individual to open his or her eyes to his or her acts, and to help the public to place responsibilities where they belong, but this is—something.

NEW YORK. ELSIE CLEWS PARSONS.

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ETHICS AND THE STRUGGLE FOR EXISTENCE.

BY J. C. FLÜGEL.

I.

PROBABLY the most dramatic revelation of modern science is the struggle for existence. The conception of Nature "red in tooth and claw," in which life evolved slowly and painfully as the result of constant war among all living things—a war in which defeat meant death—was bound to exercise a profound effect upon religion and philosophy. It is, however, more particularly in the domain of ethical thought that we should expect to find the most marked influence of such a view. Regarded from the physical, or even from the physiological, standpoint, the struggle for existence is a mere interplay of forces. From the point of view of ethics, it is seen as a process which is inextricably bound up with the weal or woe of all the living beings on earth, and which must inevitably affect our conceptions of what constitutes this weal or woe. It is, therefore, not surprising that, from Spencer onwards, moralists have frequently studied ethics in the light of evolution. There is, however, another method of considering the relations between ethics and the struggle for existence, which has less frequently been attempted. This method consists in examining the struggle for existence from the point of view of ethics. It was adopted by Huxley in his well known Romanes lecture of 1893, but has not been followed up to the extent that its interest and importance would lead one to expect. The present article, it is hoped, may constitute a very small step towards the advancement of this somewhat neglected branch of ethical study.

The question from which it starts is this:—Is the struggle for existence in human society desirable or undesirable from the point of view of the ethical conceptions of our time, and should we, accordingly—supposing we have any power in

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the matter at all—endeavor to mitigate or to increase, to abolish or to perpetuate, this struggle?

As soon as we approach this question, however, it would seem that we are confronted with two serious difficulties. The first of these—which is common to all attempts at the application of ethics to practical problems—is due to the want of agreement as to the nature of the goal of the moral life, the *summum bonum*, which should in the last resort determine all our judgments of good or bad. This want of agreement as to the ultimate moral criterion must necessarily lead to a considerable narrowing of our task, if it is to be kept within reasonable limits. It is obviously impossible, within a single article, to examine the moral aspects of the struggle for existence in the light of all the theories of the *summum bonum* which can claim adherents. I propose, therefore, in the present case, to confine our consideration to two of these theories—the theory of the good as pleasure, and the theory of the good as perfection, the highest possible development and function of our essential human nature.[1]

Both of these theories enjoy at least one great advantage for our purpose. Even among those who regard neither pleasure nor the perfection of human nature as themselves constituting the ultimate good, there are few (at any rate among Western thinkers) who will deny that pleasure and the perfection of mankind tend in a high degree to accompany the ultimate good; so that those conditions which produce a greater amount of pleasure or human perfection may be expected in the long run to produce also a greater amount of the ultimate good, whatever this may be.

[1] I am aware that these two criteria are very far from being independent of one another. From Aristotle onwards, the connection between pleasure and perfect function has been repeatedly emphasised by writers on psychology and ethics, and McDougall (*Social Psychology*, ch. v.) has recently suggested that the two corresponding conceptions of the *summum bonum* are ultimately the same. Nevertheless, I believe that the two points of view are sufficiently distinct to justify their separation in a discussion such as the present, where it is impossible to enter deeply into ultimate ethical or psychological considerations.

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The second difficulty referred to above lies in the fact that there is at the present moment no very clear and generally accepted view as to the extent and manner in which the struggle for existence is actually operative in human society. Opinions range between the two extremes, according to one of which it is considered that, as a natural law, the struggle for existence does, and always must, manifest itself among mankind just as in the infra-human world; while according to the other, it is thought that man's power over nature places him well outside its reach, and that all that is required to abolish the last traces of this primitive struggle, is a more equitable distribution of wealth and a more charitable and reasonable attitude in international and inter-racial relations. It is, however, impossible to discuss how far the struggle for existence in human society of today is ethically desirable or undesirable until we have arrived at least at some provisional agreement as to how far and in what way it is actually operative in such society, whether its action is increasing or decreasing and whether it can be, or is likely to be, abolished. As a preliminary inquiry, we must, therefore, turn to such evidence of the real state of affairs as is available.

II.

It is a widely known but frequently neglected fact, that the theory of evolution was suggested independently to Darwin and to Wallace by Malthus's doctrine of over-population. This doctrine implies a struggle for existence among men in virtue of their tendency to increase more rapidly than the available supply of food. Darwin and Wallace showed that this tendency, holding good, as it does, not only of mankind but of the whole of organic creation, is, if considered in relation to the equally fundamental tendency towards variation, capable of explaining almost the whole mechanism of evolution. It is somewhat remarkable that, while this elaboration and extension of the doctrine by Darwin and Wallace has now met with almost universal acceptance, the original proposition of

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Malthus regarding the struggle for existence among mankind, which is perhaps the most interesting part of the whole theory from the purely human and practical point of view, should have received comparatively little attention. Nevertheless, few, if any, economic writers of the first importance have ever disputed its essential points. Moreover, an impartial examination of recent scientific data bearing on the question seems very considerably to strengthen Malthus's position. We will refer briefly to five lines of evidence, which have of late become available.

1. International vital statistics show that Malthus's contentions as to the difference between the actual and possible increase of the human race were amply justified. Russia with a birth rate of just under 50 per thousand (which is probably smaller than that of India or China), and New Zealand with a death rate of 10 per thousand or less, show that an unrestrained increase of population would amount to at least 4 per cent per annum, a figure which would lead to a doubling of population every $17\frac{1}{2}$ years—a period considerably shorter than that of 25 years originally suggested by Malthus. This figure would, moreover, imply a more than fifty fold increase of population in a century, a rate which even the most optimistic would hesitate to pronounce possible in the case of our food supply. The fact that the actual increase of population was very much smaller than the theoretically possible increase, was attributed by Malthus to two causes, which he called the "positive" and the "preventive" checks respectively. The action of these two checks has also become measurable by means of modern statistics. The "positive" check is seen in the fact that the death rate of most countries is considerably more than 10 per thousand, showing that human life in these countries is shorn of part of its possible duration; while the "preventive" check is manifested in the comparatively low and still declining birth rates of the majority of the more civilised countries.

2. Modern statistics show, again, that these "positive" and "preventive" checks are complementary and are found

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in inverse proportion to one another. In the great majority of cases, countries which have high birth rates have also high death rates, countries with a declining birth rate have also a declining death rate, while the few countries of to-day with rising birth rates show also a tendency towards a rising death rate. As Malthus saw, this inverse proportion between the "positive" and "preventive" checks constitutes a very strong argument in favour of his view. If there really exists an insufficiency of food to keep alive all the children that are born, the larger the number of births, the larger will be the number of deaths, since the population cannot increase more rapidly than the supply of nutriment permits. So long as there exists a pressure of population upon the means of subsistence, it follows likewise that the smaller the number of births, the smaller need be the number of deaths from want of nutriment. Malthus endeavoured to prove the existence of this inverse proportion between the "positive" and the "preventive" checks, so far as was possible in his time. The amazingly close correspondence between birth and death rates revealed by modern statistics furnishes a much more ample and satisfactory verification, and shows that the corollary which Malthus drew from his doctrine of over-population holds good for modern conditions with greater strictness than even the most enthusiastic supporters of the doctrine would have ventured to predict.

3. If, then, there exists an insufficiency of food, we should expect to find evidence of actual difficulty of obtaining it in sufficient quantity. Such evidence is not far to seek. Professor Bowley[2] has calculated that the average earning of eight million adult working men in this country (without allowing for periods of unemployment) is about thirty shillings a week, while 32 per cent of this number earn twenty-five shillings a week or less. On the other hand we have the interesting estimate of Mr. Seebohm Rowntree,[3] who calculated the sum necessary to keep a family of five

[2] *Daily Mail Year Book*, 1912.
[3] *Ibid.*

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(two parents and three children) in full physiological efficiency. According to this estimate 23*s.* 8*d.* was the smallest income on which such a result could be obtained, even if it were spent in the most scientific manner possible. This was in York some years ago, and there is no doubt that the estimate would have to be increased somewhat for life in London at the present day. As nothing whatsoever is here allowed for luxuries, illness, insurance, or unemployment, it is sufficiently evident that there must be a very large number of families, which cannot, under present circumstances, be adequately supplied with even the bare necessaries of life.

4. The actual amount of food per head throughout the civilised world has been calculated by M. Giroud[4] for the years 1887 and 1907 on the basis of a painstaking research into the production and importation of food in all countries for which evidence was available. M. Giroud's figures for 1887 were criticised by M. Elysée Reclus, who, however, eventually withdrew his objection. The calculations have since then, so far as I am aware, remained unchallenged. The total amount of food per head, expressed in calories, is, for 1887, 2,840 and for 1907, 2,790. When it is remembered that the amount required for full physiological efficiency is 3,400 (Armand Gautier) or 3,500 calories (Atwater), it is seen that there is a very considerable deficiency, especially in the later year.[5]

5. In the above considerations we have confined ourselves, for the sake of simplicity, to that prime necessity, food. But there is little doubt that the facts are much the

[4] *Populations et Subsistences.*

[5] A convenient summary of the facts constituting these first four lines of evidence will be found in "Wages and the Cost of Living" by Dr. C. V. Drysdale, a paper written for the Economic and Statistical Section of the British Association 1913, but rejected by the Organizing Committee and subsequently published by the Malthusian League. In view of the fact that at the meeting at which this paper should have been read there was a complete failure to point out any effectual remedy for the increased cost of living—the question to which this particular meeting was entirely devoted—the rejection of the paper constitutes a striking example of the undue neglect of the important matters we have been considering.

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same as regards all other necessaries. The National Census of Production for 1907 and the voluntary census taken by the Board of Agriculture in 1908[6] revealed the fact that the net value of the new material wealth annually available for consumption in the United Kingdom amounted to about £25 per head. This is surely an astonishingly small total for one of the wealthiest countries in the world and indicates that there must be a great shortage of the necessaries of life among considerable sections of our population.

This brief survey of economic facts would seem to justify us in assuming that there exists to-day a struggle for existence in human society very similar in general character to that found in the animal world; a struggle which is, no doubt, considerably modified both as to its form and its effects by human institutions, but which exists nevertheless, and cannot be abolished as long as there continues to be a pressure of population upon the necessaries of life.

But although the struggle exists, the facts do not justify us in regarding it as a necessary and permanent feature of human society. It is clear that there are two possible ways of bringing the struggle to an end: (1) by a more rapid increase in the production of necessaries, so that there may be an ample supply for all who are born; (2) a less rapid rate of reproduction, so that the increase of population may no longer tend to outstrip the increase of the necessaries of life. Furthermore, it is evident that both these means of putting an end to the struggle are, to a very considerable extent, in process of realisation. The supply of necessaries available in the civilised countries of the world has increased at an unprecedented rate during the last century; but this of itself, as Mill and other economists have pointed out, has not put an end to the struggle for existence, but has merely enabled larger populations to live in much the same condition as the smaller populations before them. During the last thirty or forty years, how-

[6] Both conveniently summarized in *The Nation's Wealth* (ch. 4) by Mr. Chiozza Money.

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ever, there has been manifested in most civilised countries a strong and increasing tendency towards a slower rate of reproduction, by means of a voluntary limitation of the number of births.

These two factors, taken together, give us good ground for asserting that there exists, in civilised communities, a strong tendency towards the abolition of the struggle for existence—a tendency which, it is quite possible, may become completely realised in the course of the next half century. The only fact which prevents this realisation taking place within the next few years is the comparatively high birth rate among the poorest classes, who have not yet acquired the habit of voluntary control of reproduction already prevalent among the better-off. The penetration of such habits throughout the whole community would seem, however, to be only a matter of time. As Havelock Ellis has recently pointed out in *The Task of Social Hygiene*, a low birth rate seems to be an almost inevitable accompaniment of a high state of civilisation. Indeed the phenomenon is but a particular instance of that general antagonism between individuation and genesis, to which Spencer called attention. Thus all efforts to improve the condition of the poorer classes—in particular those efforts which aim at an improvement in education—tend indirectly to reduce the birth rate of these classes, and thus to mitigate the struggle for existence. It is also possible, however, to aim *directly* at a reduction of the birth rate. At the present moment the forces working to this end are comparatively small, but it seems fairly certain that if only a small proportion of the philanthropic effort now devoted to the mitigation of poverty were directed towards its abolition by means of a vigorous campaign against the high birth rate of the poor, the struggle for the mere necessaries of existence would come to an end within a surprisingly short space of time. On the other hand, it is, of course, equally true, that, by a determined effort to maintain the high rate of reproduction among the poor, this tendency towards the extinction of the struggle for

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existence may be postponed, perhaps for an indefinite period.

To sum up our consideration of the actual facts concerning the struggle for existence, we have found:

(1) That the struggle for existence is actually operative in human society of today, in virtue of the inadequacy of the supply of necessaries to meet the demands of the existing populations;

(2) That this struggle is, however, tending to cease;

(3) That it lies within human power to hasten forward or to postpone the time when this tendency shall become realised.

In view of these conclusions, the ethical problem, which we raised at the beginning and to which we shall turn in a few moments, acquires an added interest. It is a practical question of the greatest importance for all those—statesmen, capitalists, philanthropists and others—who are concerned on a large scale with shaping the destinies of the human race; it is, moreover, a question of exceptional urgency at the present moment. If the abolition of the struggle for existence among mankind is desirable, then it is surely our duty to help forward the tendency toward its abolition, which, as we have seen, already exists. If, on the other hand, the struggle for existence plays on the whole, a beneficent rôle in human life, then it becomes equally our duty to oppose this tendency. In any case, the question ceases to be of merely academic interest, but becomes one, the answer to which must profoundly affect our attitude toward the gravest social problems of our time.

Hitherto we have considered the struggle for existence as it is manifested between individuals of the same group or community. There is, however, another aspect of the struggle for existence among mankind—the struggle between different groups, nations, or races. This is indeed regarded by some as the most characteristic expression of the struggle for existence among mankind. Nevertheless I do not intend to enter upon a full consideration of it here: principally, for reasons of space; but partly also, because

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it is, for obvious reasons, receiving at the present day a much greater amoung of public attention than is the (at least equally important) struggle between individuals, which we have hitherto been considering; and partly too, because it is possible to show in a few words that, in general, very much the same considerations apply both to the struggle between groups and the struggle between individuals. The struggle between nations and races exists, and is manifested in wars, in commercial and industrial competition, and, generally, in the struggle of populations for the food supply of the world. But, like the struggle between individuals, this aspect of the struggle—in spite of the present sudden outburst of military activity—is nevertheless, on the whole, undoubtedly exhibiting a tendency to cease. This tendency may be traced partly to the growth of moral and political traditions in favour of peace and arbitration, partly to a general preoccupation with peaceful rather than with warlike enterprises, and partly, as it is the merit of Mr. Norman Angell to have so clearly pointed out, to the fact that war has to a great extent lost its character as a genuine expression of the struggle for existence.[7] Owing to the vast extent and complexity of modern international economic relations, the leading nations of the world are no longer opposed to one another as single, independent, economic units, but the prosperity of one nation is, in an infinity of ways, bound up with the prosperity of all others. Similarly, the merely economic struggle of the different populations for the world's supply of necessaries, is also tending to cease; and by the very same mechanism that is bringing to an end the struggle for existence within the boundaries of a single community, viz., the less rapid rate of reproduction manifested in the declining birth rates of nearly all the more civilised nations of the world.

Thus the struggle between groups is in the same condition as the struggle between individuals. It still exists,

[7] The tendency here referred to is clearly brought out in the demand now being made by many different sections of the community that the present war should, if possible, be made a "war to end war."

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but there are powerful forces tending towards its extinction. Further, its cessation or its continuance are matters which are very largely within human control. It is possible for the struggle for existence between civilised nations to come to an end within a few years, if the requisite political and economic—and, in view of present events, we may perhaps add, military—measures are undertaken; on the other hand, the struggle may be prolonged for decades, or perhaps, even for centuries, if warlike tradition is sufficiently fostered and populations continue to grow at a sufficiently rapid rate.

III.

After this lengthy preliminary excursion into the domain of sociology and economics, we are now in a position to turn with much greater interest and profit to the purely ethical part of our inquiry. In so doing, we will confine ourselves first to the ethical aspects of the struggle between individuals. This struggle, as we have seen, manifests itself primarily in the inability of a considerable section of the population to obtain an adequate supply of the necessaries of life. The first and most indispensable of these necessaries is food, but there are many other things commonly classed among the necessaries of life—such as housing, clothing, fuel—which are only of slightly less importance. Our review of facts has shown (and indeed it is pretty generally recognised) that among the poorer classes of even the most civilised nations there is frequently a lack of all these things. How is this condition of affairs to be judged in the light of the two ethical criteria that we decided to use—pleasure and perfection? From the point of view of pleasure, there can be little doubt that it must be utterly condemned. The want of the necessaries of life inevitably causes pain—the pains of hunger, thirst, heat, and cold, as well as smaller discomforts too numerous to mention. Besides these immediate pains, there are, too, remote effects to be considered, such as suffering caused by illness or by stunted growth consequent on exposure or insufficient nourishment.

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From the point of view of perfection, it would seem at first sight that our condemnation must be equally unhesitating. Perfection implies complete development of life, whereas want of any of the necessaries of life inevitably hinders such development, causing, on the contrary, impairment of life, both in quantity and quality. In fact, want of the actual necessaries of life must inevitably be judged bad according to any standard which considers the individual life a good. It is only a pessimistic philosophy (pessimistic at least as far as this life is concerned) which can approve the struggle for existence in so far as it manifests itself in an actual shortage of necessities.

So far the answer to our problem seems simple enough; but a little further consideration will show that there are grave objections to be met, before we can agree to the universal applicability of this solution. It is true that a cessation of the struggle for existence would afford more opportunities for the perfection of human nature. But is this nature so constituted that it can avail itself of these opportunities for its own development? The human race, like all other existing races of earth, has a history of struggle behind it, has become what it is in virtue of success in the struggle, and has instincts and impulses which are, to a very great extent, adapted to an environment of struggle. Are we not demanding far too great a power of change in human nature, when we ask that it shall adjust itself in a few years to a state of peace and plenty, whereas throughout its history it has been used to a condition of struggle and scarcity? The necessity of finding food is, after all, one of the prime motives of human activity, just as it is the most fundamental motive to action throughout the animal world. If the urgency of this motive is removed, will not mankind fall into a condition of slothful ease, the very opposite to that of the perfect activity which we desire? Or, even worse than this, is it not possible that the absence of the usual stimulus to work will produce such a state of idleness and inactivity, that all progress will be stopped and even the necessary work of the world be inadequately

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performed; so that the struggle for existence will begin again owing to the insufficient production of necessaries, our whole attempt to abolish it being thus rendered abortive? If this objection should prove valid, it would constitute a veritable *reductio ad absurdum* of any proposal to abolish the struggle for existence, and it behooves us to examine it conscientiously in the light of any facts which seem to have a bearing on it.

Although the struggle for existence still holds sway over human society as a whole, there are (and have been in nearly every large community) a very considerable number of individuals who are amply provided with all the necessaries of life. It would seem that these individuals should afford a useful criterion for judging the validity of the above objection. If the struggle for existence really supplies an indispensable stimulus to human activity, then we should expect that those individuals among whom there is no struggle for existence would be less active and efficient than the other members of the community. If, on the other hand, they are just as active and as useful as their poorer fellows, it is evident that the struggle for existence is not a necessary and indispensable incentive to human endeavor, and that it is quite possible for the human race to continue to progress without it.

Now, apart from the speeches and writings of the more extreme socialists, it is fairly generally admitted at the present day that the ranks of the well to do include many of the most useful and indispensable members of society. It is indeed impossible to deny that a very great proportion of the work of supervision, organization, and initiation, upon which modern methods of production so intimately depend, is due to men whose means place them beyond the range of the struggle for existence. Or, neglecting economic considerations altogether, there is little doubt that we should find that the best producers of artistic, literary, or scientific work, as well as the most distinguished members of the "professions," although not as a rule possessors of great wealth, have nevertheless, in the great majority of cases,

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been used to an ample supply of necessaries and of the less expensive luxuries from childhood upwards. There are, of course, a considerable number of idlers and incapables among the rich, but it is probable that the proportion is no larger (and very possibly a good deal smaller) than among the poor. We may, then, fairly safely conclude that, under certain circumstances at any rate, human nature is able to adapt itself to conditions of life involving no struggle for existence, without serious impairment of activity.

But although we admit that human nature is capable of such an adaptation, this must not blind us to the fact that there are circumstances under which the adaptation is difficult, if not impossible, of accomplishment. It may be easy for an individual to work hard, even without the stimulus afforded by the struggle for existence, if from youth upwards the motives have been other than those connected with the mere maintenance of life. But with individuals of mature age, whose principal stimulus to exertion has been the fear of, or presence of, actual want, it may be very difficult to bring about the substitution of motives which a cessation of the struggle for existence renders necessary. Thus it may take an appreciable time before our proletariat can become as completely adapted to a condition of plenty, as are the upper and middle classes at the present day; but there seems no reason to suppose that such an adaptation cannot ultimately take place.

There is another seemingly important biological objection against any attempt to put a stop to the struggle for existence, which may perhaps have occurred to the reader, but which can fortunately be disposed of very much more rapidly. Evolution, it may be argued, has hitherto taken place in virtue of natural selection. If now the struggle for existence ceases, natural selection must cease too. Will not the human race thus be in danger of physical deterioration, since the mechanism hitherto determining its evolution has been abolished? To this objection there are two answers. First, it may be said that, although the struggle for existence continues, natural selection has already, to a

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very great extent, been interfered with in the more civilised countries; charity and medical science now keep alive many, who would die in early youth in a more primitive condition of society. Thus the total abolition of natural selection would only be carrying a step further a tendency which already exists. Modern sociological thought has brought into prominence the evils to which this tendency gives rise, but has at the same time indicated that the remedy lies, not in a return to a more primitive state of social life, in which charity and medicine play no part, but rather in the substitution of a rational selection based on human knowledge for the natural selection based on instinct and survival of the fittest. Now, there can be little doubt that the abolition of the struggle for existence would bring about conditions very favourable for the exercise of rational selection. The thought for the future and the reasoned adaptation of the size of the family to the available means of subsistence (both of which are necessary conditions for the abolition of the struggle for existence) would seem to call into play very much the same qualities, moral and intellectual, as are required for the successful practice of eugenics. Thus we see, as regards the objection on the score of natural selection: (1) that the operation of natural selection has been very largely superseded in civilised societies, quite apart from the abolition of the struggle for existence; (2) that the most generally recognised method for overcoming the evils consequent on a cessation of natural selection is eugenics or rational selection, and that eugenics and the freedom from the struggle for existence would very well go hand in hand.

Besides the shortage of the necessities of life, which we have hitherto been considering, the struggle for existence implies also a shortage of luxuries, *i. e.*, commodities which are not essential for the maintenance of life, but which are intended to add to their owner's comfort or convenience, or to minister to some special desire the gratification of which is not necessary for the continuance of life. Inasmuch as "man shall not live by bread alone," the want of

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such commodities is nevertheless a matter of importance in human life, though there is room for considerable difference of opinion as to the real value of all but the simplest forms of luxury.

There are perhaps some good reasons to doubt whether the many luxuries which the wealthy classes of to-day possess cause an increase of happiness at all proportionate to the labour and capital expended in their manufacture. There exists a law of diminishing returns of enjoyment, according to which, for instance, a doubling of the means of pleasure will not produce a doubling of the actual pleasure derived, but something very considerably less than this; while each further unit of expenditure upon the opportunities of enjoyment will produce a smaller increment of the total sum of happiness.[8] Further, while the pleasure derived from luxury is not as great as might at first be hoped, the use of luxuries increases our susceptibility to pain, should we at any time be compelled to do without them. Travelling in a bus may seem a slow and inconvenient means of locomotion to a man accustomed to the use of his own motor car, while the same bus may seem a comfortable enough vehicle to one whose only alternative is to walk. This is perhaps even more marked as regards the minor luxuries of life, which come to be regarded in the light of necessities by those who are accustomed to possess them. Thus, to be deprived of an unlimited supply of soap and water would appear almost intolerable to many members of the richer classes, while the same deprivation probably causes but a minimum of discomfort to many hundred thousands of the poor. We must not, therefore, conclude that the shortage of luxuries among large sections of the community brings with it as much pain as would the same shortage to those accustomed to their use. In this respect the want of luxuries is quite different from the want

[8] The case against luxury on these grounds has recently been strikingly presented by Mr. E. J. Urwick in his *Luxury and Waste of Life*, and still more recently by Professor Münsterberg in his chapter on Socialism in *Psychology and Social Sanity*.

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of necessaries, which must inevitably cause pain wherever it occurs.

But in spite of these objections, the fact remains that in themselves luxuries *do* give pleasure, and are therefore desirable from the hedonistic point of view, so long as their use does not involve an ultimate increase of pain. It is conceivable that, with a decrease in the pressure of population and an increase in the supply of commodities through scientific methods of production, every member of a civilised community would have an ample supply of the lesser luxuries and conveniences, which modern invention has made possible. Such a state of things would seem to be highly desirable if pleasure is the goal of life. If a moderate supply of luxuries is thus defensible from the point of view of pleasure, how does it appear when regarded in the light of our other criterion—perfection? It is often urged that luxuries are inimical to the development of full human powers, inasmuch as they sap the energy of those who enjoy them, depriving them alike of motive and of ability for vigorous work. We have really answered this objection already, when dealing with the effects produced on human nature by the removal of the stimulus to activity afforded by the lack of necessaries. We saw that there are many who, though amply supplied with the necessaries of life, nevertheless continue to manifest a high degree of activity. Now the vast majority of those, whose means place them beyond the struggle for existence, are also enjoying the daily use of luxuries. Thus the same evidence which shows that actual want is not a necessary condition for the full exercise of human powers, proves also that the possession of luxuries does not necessarily interfere with such exercise. Indeed, it is easy to see that there exist many people who, though amply supplied with luxuries, nevertheless lead strenuous and useful lives. Further, it is evident that many luxuries are of a nature to stimulate rather than to weaken activity and that they provide fresh opportunities for the development and exercise of human powers. Such luxuries as the tennis court, golf course,

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gymnasium, and swimming bath, give opportunity for the healthy development of the body; foreign travel widens the mental outlook, provides numerous fresh sources of interest, and leads to a more sympathetic and understanding attitude towards other nations and races; while it is generally agreed that the more intellectual and æsthetic luxuries, such as music, literature, drama, and the fine arts, give rise to some of the highest and most desirable activities of the human mind. Indeed, it is sufficiently evident that it is possible to attain a far higher and more "all round" standard of human development with the aid of luxuries than without them, since in the latter case all activity is directed to the obtaining and enjoyment of the mere necessaries of life, and is, therefore, of a comparatively simple and monotonous character. The desire for luxurious and unnecessary things is one of the most distinctively human features of our minds (though the elaborate and beautiful "secondary sexual characteristics" of some animals show that they are not entirely devoid of rudimentary æsthetic appreciation), and the gratification and furtherance of this desire would seem to be a necessary condition for the fullest possible development of our essential human nature. Luxuries may undoubtedly be abused—as indeed may any other useful or desirable things—but that does not constitute an argument against their possession by the normal human being.

The case for the enjoyment of luxuries would seem thus to be even stronger from the point of view of perfection than from the point of view of pleasure; and the continuance of the struggle for existence, which necessarily precludes large numbers from any considerable amount of such enjoyment, appears therefore all the more ethically undesirable.

IV.

Let us turn now, in conclusion, for a few moments, to a consideration of war and the struggle for existence between groups. Here our task is made easier by the fact that few, if any, serious thinkers uphold war from the point

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of view of pleasure. It is true that the soldier, pent up in barracks and long denied the true exercise of his profession, may greet with delight the prospect of a campaign; it is also true that many who have been engaged in monotonous or uncongenial occupations will joyfully adopt the soldier's trade, with all its trials and dangers; but, at best, war is an exceedingly expensive method of obtaining the excitement and exercise which most healthy natures seek, and of late years it has become generally recognised that, on the whole, war between modern nations causes far more pain than pleasure. It is doubtful whether, under present-day conditions, war even forms an adequate outlet for the combative impulse (it is difficult to conceive that there can be much pleasure in fighting an enemy who is for the most part invisible); while against the agreeable excitement of the combatants—which could probably be obtained in nearly the same degree by almost any other venturesome undertaking—we have to consider the pains and discomforts of the wounded, the anxieties and sorrows of relatives, and the widespread miseries and privations consequent upon the economic disturbance in the hostile countries.

Although there are few, if any, who regard war as an asset from the point of view of pleasure, there are still quite a number of writers who uphold war from the point of view of perfection; and it would seem that this view of the function of war has considerable influence with the more thoughtful members of the great military organizations of Europe. By followers of this school it is maintained that war is a moral tonic, by which many of the virtues (such as self-sacrifice, love of country, etc.) are strengthened, and which forms a necessary corrective to what they are inclined to regard as the petty and egoistic spirit fostered by the modern life of commerce, The attitude is not a new one: at all times and places the soldier has regarded himself as morally and socially superior to the artificer or merchant, and it is, of course, impossible to deny that war may strengthen and develop certain

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desirable aspects of human nature. Nevertheless, the deeper and more earnest moralists of every age and country have, almost without exception, regarded a condition of peace as a higher social state than that of war. Against the ennobling effects which war may have in certain cases, we must weigh the very real moral deterioration to which most serious students of modern campaigns have drawn attention. At its best, war leads to a one-sided development, a philistinism, a blind obedience to authority, which must be inimical to the fullest possible development of the human powers; at its worst, it leads to a more or less complete letting loose of many anti-social tendencies, the adequate repression or modification of which it has taken mankind generations to acquire.

Even as regards the actual benefits derived from war, it is doubtful whether they cannot be obtained in even greater degree in time of peace. The self-sacrifice, the hard work, the wholesome discipline, which are required from the soldier, are required also from those who aspire to success in the industrial, the artistic, the scientific, or the professional life. As regards the struggle for existence among civilised nations, the exercise of the sterner virtues in the arts of peace is to-day much more important than it is in the arts of war, since the relative growth and prosperity of peoples is determined chiefly by progress in industry and science and but little by their ability in war.[9] Even the highly desirable social virtues underlying the better forms of patriotism can probably be cultivated without the help of war. There are conquests of peace as well as conquests of war, and it is possible to serve one's country at least as efficiently by improving her position as regards social, industrial, scientific, or artistic achievement, as by increasing her political or military power.

Finally, it is possible for patriotism itself to be modified so as to embrace a larger part of humanity than the race or nation in which we have been reared. A community of culture and of economic interests between the nations, as

[9] Cf. Norman Angell, "*The Great Illusion*," Part II, ch. 4.

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well as the increasing understanding bred of closer contact, are gradually making possible a patriotism which applies to the whole of the civilised world and which manifests itself in love and labour for humanity rather than for any restricted portion of our fellow men.

Considered ethically, war would thus seem to be in much the same condition as the struggle for existence between the individual members of a single community. Whether we take pleasure or perfection as our criterion, war between civilised nations can scarcely claim to do more good than it does harm; and it is possible to show that the alleged benefits of war could probably be obtained in even greater degree by a modification or sublimation of the energies involved.[10]

V.

We have now studied the many different aspects of our problem as thoroughly as the limited scope of this article permits. We started from the question whether the struggle for existence in human society was desirable or not. Before attempting to give an answer, we found it necessary (1) to decide upon some criterion by which to judge the ethical value of the struggle, (2) to come to some agreement as to the precise facts relating to the struggle for existence at the present day. As to (1), we decided to accept pleasure and perfection as our two criteria. As regards (2), we found that the struggle for existence is still operative in human society of today, but that it is tending to cease and that it is within human power to delay or to hasten its cessation. We then saw that neither for the struggle between individuals nor for the struggle between groups can it be claimed that it is productive of greater pleasure and less pain than a state in which there is no struggle. Similarly, judging from the criterion of human perfection, the cessation of the struggle appeared more desirable than its continuance.

[10] I am, of course, aware that there may be wars which, in so far as they tend to replace a lower civilisation by a higher one or to defend a higher against a lower one, may be justifiable on the ground we have been considering. Such wars, however, must always become increasingly rare as civilisation extends.

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Our conclusion would thus seem to be that, from the point of view of the ethical criteria we have adopted, we may look with equanimity upon the course that things are taking. We may perhaps even go further than this, and assert that we have ethical justification for endeavoring to hasten forward the time when the struggle for existence in human society shall be no more; thus contributing, if our conclusions are correct, in some small degree to the greater pleasure and perfection of mankind in our own generation. Whether we decide to participate actively in the social forces which are tending to put an end to the struggle for existence, or to content ourselves with passive contemplation of the working of these forces, it is well to remember that we are the privileged spectators of what is probably one of the most momentous periods of human history—the moment when mankind is definitely freeing itself from the methods of evolution common to all the other races of the earth, and is preparing to carve out its destiny in future by methods of its own devising. Surely such a moment must present many and varied problems to every student of the social sciences—problems, moreover, of the highest practical and theoretical importance. Are they not, perhaps, worthy of greater consideration than they have yet received at the hands of moral philosophy?

J. C. FLÜGEL.

LONDON, ENGLAND.

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BOOK REVIEWS.

Is Conscience an Emotion? Three Lectures on Recent Ethical Theories. By Hastings Rashdall. Boston and New York: Houghton Mifflin Co., 1914. Pp. x, 200. $1.00.

This book consists of three lectures delivered upon the Raymond F. West Foundation at the Leland Stanford Junior University in 1913. The lecturer is undoubtedly the ablest living representative of rationalism in ethics. More than this, his various writings form one of the most persuasive presentations of the position of his school that have yet appeared. Whatever he writes is therefore sure to be worthy of careful examination. The present series of addresses is no exception to this rule.

The characteristic features of Dr. Rashdall's rationalism are probably known to those sufficiently interested in ethics to read this notice. Following the lines laid down by Sidgwick, though with certain modifications of his own, he recognizes the existence of two axioms—in his earlier writings split up into three—as lying at the foundation of the distribution of goods. They are: "One man's good is of equal intrinsic value with the like good of any other," and "The greater good (whether of self or another) ought to be preferred to the less." Unlike Sidgwick he asserts, in addition, the existence of *a priori* judgments revealing an objective scale of qualitative differences between goods; though he admits—as well he might—that the existence of such judgments is more difficult to demonstrate than the simpler axioms of quantity.

The content of the book before us consists of a defence of ethical rationalism and a criticism of certain of its opponents, notably, in the first lecture, Hutcheson and Hume, in the second Westermarck and McDougall (in the course of an examination of primitive morality), and in the third James as the author of The Moral Philosopher and the Moral Life. The arguments urged against these particular writers as such are new, except as they have appeared in the author's recently published little manual, Ethics; but of course they are based on principles which were presented at length in The Theory of Good and Evil. The positive arguments for rationalism are in part the old ones, but

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there are some significant differences between the earlier and the later book. Perhaps they are due to the exigencies of advocacy through the instrumentality of popular addresses. But whatever the cause, the fact remains that far less is made of intuitions of quality in goods and far more of the axioms of equity and benevolence. In The Theory of Good and Evil the latter are regarded as merely particular applications to ethics of the mathematical axioms, and not, properly speaking, as moral axioms at all; while in the present book the most elaborate argument for rationalism is based precisely upon these axioms. The author points out that our moral judgments have two characteristics which differentiate them absolutely from such experiences as the liking or the dislike for mustard. One is impartiality, or as we might perhaps call it, impersonality. What is right for one is right for every one else under the same conditions, whether or not I myself, my best loved child, a complete stranger, a bitter enemy, or some one who died three thousand years ago is one or the other of the parties concerned. The second characteristic is consistency. When two moral judgments are recognized as inconsistent, we recognize at the same time that at least one of them must be modified or abandoned. David sees that it cannot be right for him to take Uriah's wife, if it is wrong for the rich man to seize the poor man's lamb. These patent facts, it must be admitted, are ignored wholly or largely by most representatives of the emotional school. Westermarck, who has too much of a grip upon the moral experience in its concrete manifestations to be capable of such blindness, does indeed note their existence, but only in a timid, half-hearted way. Ignored or acknowledged, however, they are fundamental in any proper conception of the moral judgment. Accordingly Dr. Rashdall's challenge to find a place for them in any other than a rationalistic system is one that his opponents are bound to meet.

The present reviewer is one of those who believe that this challenge can be met, though he does not consider this notice a proper place in which to argue the matter. It must suffice to point out that besides emotionalism (if that term must be used) and rationalism there is a third ethical theory which our author nowhere explicitly considers but for which he has so much regard that he annexes its representatives in a body to his own school. How far he is justified in so doing will appear from a glance at a few of the names, Green, the two Cairds, Bosanquet, Mackenzie,

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Royce. The fact of the matter is that these men are as far from pure rationalism as they are from pure emotionalism. It is the distinction of Hegel to have seen that there is such a thing as a logic of desire (or, if you prefer, of emotion), and that the moral *judgment* (and not merely moral conduct, as Kant would have it) gets its character through the action of reason on desire. Hegel's acquaintance with the facts of the moral experience was too incomplete and too imperfect to enable him to accomplish much in the use of this principle. In its application to the details of the moral life, the theory has not been worked out, since its first presentation, as it should have been. Nevertheless it has able supporters, as the above names show; and Mr. Hobhouse's extensive treatise, Morals in Evolution (which Dr. Rashdall refers to with the greatest respect) is nothing more nor less than a systematic attempt to apply it to the concrete facts of the evolving mind. No defence of rationalism is complete which does not come to terms with this view. Indeed no criticism of emotionalism is valid which does not recognize the existence of this factor in the system of the leading members of the eighteenth century "Moral Sense" school. For everyone knows that the emotions of adults, pathological cases apart, are always aroused by ideas, represent an attitude toward a conceived situation. Therein is at least implicitly recognized the possibility of applying the terms impartiality and consistency in reference to them. Inconsistency, for example, means in part, feeling differently about the same. Shaftesbury and Hutcheson knew this, though they did not apprehend its full significance; Hume recognized it in his own way, too (see, among other things, his essay entitled A Dialogue). The fundamental defect of Dr. Rashdall's valuable defence of rationalism is that he has ignored the possibility that this view may be capable of being just to the permanent elements in rationalism, while at the same time enabling us to explain the equally indubitable facts upon which emotionalism insists, but which its historic opponent either persistently ignores or treats in an extremely arbitrary way.

FRANK CHAPMAN SHARP.

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BOYCOTTS AND THE LABOR STRUGGLE: LEGAL AND ECONOMIC ASPECTS. By Harry W. Laidler. New York: John Lane Company, 1913. 8vo., pp. 488. $ net.

A willingness to see in a single institution something of a cosmos in miniature is necessary to an intelligent appraisal of Laidler's *Boycotts*. So full is the ethical world of a number of things that a movement even as significant as trade unionism can command only a modicum of attention and a large volume upon so minute an aspect of this general subject as the boycott deserves, on its intrinsic merits, only passing mention. Accordingly, were the volume before us written from the particularistic viewpoint which detaches its field of knowledge from the universe and discovers truth by a detailed mechanical analysis, it might at once be relegated to the limbo of oblivion.

But, fortunately, the author has escaped particularism and has produced a treatise of vital interest to students of contemporary social movements in economics, jurisprudence, and ethics, even though they have no primary concern with the boycott. This relevancy to larger things depends upon three characteristics of the author's method of approach. First, he has a clear perspective of the social situation as an entity and of the place of the labor movement within it; he refuses to draw lines where none exist; and he deals with his topic, not as a thing apart, but as an aspect of the larger problem of conscious social development. Second, he labors under no impression that his task is to state the "scientific is" of the boycott; he realizes that his positive work is conditioned by his practical problem; and he does not shirk the responsibility of pronouncing an ethical judgment upon the institution he is studying. And third, he presents in the boycott a clear epitome of the contemporary clash of two opposing systems of social ethics. The prevailing legal system, the institutional framework of society, and conventional standards of industrial morality are regarded as the expressions of an industrial class coming into its own in a period of such rapid change that social organization could follow no conscious plan and reliance had to be placed upon individual self-interest. Against this the self-conscious labor movement, the philosophy of class solidarity, and its system of group morality are presented as manifestations of a system of duties and privileges based upon the principle of the conscious subordination of the individual to his own social group. In the labor movement one finds many a

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concrete example of this clash of ethical principles; and the value of this volume lies largely in its use of the boycott as a means of visualizing this larger ethical struggle.

In view of this larger purpose the author divides his treatment into three parts, entitled, "Economic Aspects of Boycotts," "Legal Aspects of Boycotts," and "Boycotts in the Light of Social and Economic Conditions." The first states the nature of the weapon, analyzes and classifies its forms, surveys its history, gives detailed descriptions of its most conspicuous manifestations, presents the attitude of various unions towards it, enumerates the conditions necessary to its success, and estimates its strategic value. The second surveys the typical cases which have come before the courts, analyzes the reasoning by which some boycotts have been declared legal and others illegal, summarizes the attempts to legalize the instrument, and traces the development of the spirit of protest which has accompanied the increasing restrictions placed on its use by the judiciary. The third makes a comprehensive study of the social situation of the laborer, gives an account of the institutions and conventions which unconsciously oppose its interests, points out the forces which consciously it has to fight, explains in detail the actual working of the machinery recently created for suppressing its attempts at institutional expression, and considers the alternative social results of legalizing or failing to legalize the boycott.

The discussion as a whole turns upon three very significant propositions. The first is that the boycott automatically fixes the limits of its own activity. It must be admitted that it is prone to abuse, particularly at the hands of those who have not used it before. But experience has demonstrated that its use is rigidly circumscribed by the laws of efficiency. Many factors are pertinent to its success, including the nature of the demand for the article; its use in large quantities by unionists, "the public," or opponents of unionism; its classification as a productive or a consumptive good; the area over which it is sold; the amount of capital possessed by the concern producing it; the causes leading to the imposition of the boycott; its favorable publicity; and the vigor with which it is pushed at the outset. Boycotts have, of course, been won in the face of adverse conditions, but these have been exceptional. Even more significant is it that the strategic value of the boycott depends very largely upon the moderation with which it is used. To the reviewer it seems that

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these very limits upon its effectiveness cast serious doubts upon the propriety of its use. Correct strategy would require its moderate use at points where it can be most effective. This means the use of the buying powers of labor generally for benefits that can accrue only to a small class of laborers and threatens to create a labor aristocracy within the ranks of unionism. The reviewer would further suggest that it rests upon an antiquated psychology. It seems to assume that the feeling which restrains consumers from purchasing boycotted articles can mysteriously be made to disappear by the magic ritual of "settlement" and the lifting of the boycott. It is to be regretted that the author did not consider these objections more fully.

The second significant proposition is that ethically the boycott rests upon propositions incompatible with those underlying the present institutional system and unintelligible to those steeped in individualistic habits of thought. Court decisions on boycotts furnish an adequate revelation of this antagonism. The labor group has no legal standing as an entity. Its concern is for the welfare of the group whose life transcends that of its immediate personnel. Its thought necessarily runs in terms of a period many times as long as that of the labor contract. It is confronted with the problem of finding vehicles suitable for the expression of this more ultimate group interest. Among such vehicles it has adopted the boycott. Since the boycott serves in such a capacity, it is not surprising to find that the legal system, established on individualism, is powerless to evaluate it, for it belongs to an intellectual world to which current jurisprudence has no open sesame. Perhaps this lack of mutual intelligibility explains the tangles that judicial decisions get into in attempting to appraise so extraneous an institution. To take a single example, compare the legal status of the strike with that of the boycott. The former has usually been declared legal; the latter, illegal. The former involves the right to stop work; the latter, to stop buying. Both aim at an immediate pecuniary loss to the employer; both, eventually, at the increased welfare of the laboring class. Possibly boycotts can be declared illegal on the ground of conspiracy; but in that case how can the strike escape? Each merely represents a collective exercise of a universally recognized individual right. In passing it is interesting to note the eighteenth century concept of "public welfare" held by the courts. Property rights, which are claims to future increments of income, are included in the

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capacious confines of "public welfare," and are afforded zealous protection by the courts; but the future interests of the labor group have never found lodgment within even so catholic a category.

The third significant proposition is that the outlawing of the boycott will probably lead to the use of a more radical vehicle as a substitute. It must be noted that the strategic positions of employers and laborers have been changed in the last ten years. The former have been organizing themselves into compact associations. Strike-breaking has been scientifically studied and reduced to an exact art. Unionism has been crippled by the introduction of "spies" into labor organization. The strategy of a labor campaign is likely to be known early by the employers. Because of greater solidarity, the employers can make use of outlawed instruments, such as the blacklist. But, on the contrary, unionism has been weakened. If it is by the courts denied the use of such a conservative vehicle of expression as the boycott, the accumulating spirit of social protest will find some other method of asserting itself. With a growing conviction that the institutions of the country are arrayed against labor, this expression is likely to take two forms. One is radical political activity. The other is the use of subtle methods of harassing the employer, such as sabotage; against which injunctions, judicial decisions, and the police are alike powerless. Just now our supreme need is a system of social ethics in which the interests of antagonistic classes can find harmonious expression. If the way is left open for class consciousness and social protest to use the less radical vehicles, such a need can approach realization. If not, class expression in revolutionary forms is likely to lead to a chaos in social standards.

The problem of evaluating the boycott is a difficult one. Few records are available and they are incomplete. The instrument is so closely connected with pecuniary interests that clear perspective and fair judgment are difficult to obtain. The testimony of laborers is likely to be charged with passion rather than reason. Employers are, as a matter of strategy, inclined to insist that they have not been hurt, unless, perchance, they have pending claims against the unions for damages. It is too much to assert that the author has kept his well known attitude entirely from influencing his work. But, on the whole, he has given us an intelligent and an honest study. Its analysis is keen; its scope, comprehensive; and its vision, far-reaching. It is just

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the kind of a study that needs to be made as a preliminary to intelligent legislation. It is to be particularly recommended to stalwart conservatives who are gravely concerned with the preservation of our institutions.

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LIFE'S BASIS AND LIFE'S IDEAL. By Rudolph Eucken. English translation by A. C. Widgery. London: A. and C. Black, 1911. (Original Title, *Die Grundlinien einer neuen Lebensanschauung.*)

PRESENT-DAY ETHICS IN THEIR RELATIONS TO THE SPIRITUAL LIFE. Deem Lectures. New York, London: Williams and Norgate, 1913.

THE PROBLEMS OF HUMAN LIFE. By Rudolph Eucken. English translation by W. S. Hough and W. R. Boyce Gibson. Revised and enlarged edition. London: T. Fisher Unwin, 1914. (*Die Lebensanschauungen der grossen Denker*).[1]

CAN WE STILL BE CHRISTIANS? By Rudolph Eucken. English translation by Lucy Judge Gibson. London: A. and C. Black, 1914.

ZUR SAMMLUNG DER GEISTER. Von Rudolph Eucken. Leipzig: Quelle und Meyer, 1915.

A few years ago the present writer contributed to this JOURNAL an account of the Philosophy of Eucken,[2] in brief compass, but, at least in intention and endeavor, definitely sympathetic. That statement was accepted, within its limits, by the distinguished German thinker as an adequate account of his essential position. At that period Eucken's work was only beginning to be generally known in the English-speaking world, mainly through the devotion and enthusiasm of Mr. W. R. Boyce Gibson. Since then much water has flowed beneath the bridge. The successive editions of Eucken's numerous and usually voluminous writings have circulated in Germany in tens of thousands; the various English translations (of which the most recent are named above) have made his name universally familiar, and have been followed

[1] The original edition of the English version of the *Lebensanschauungen* was reviewed in this JOURNAL by Mr. A. O. Lovejoy, vol. xxi, October 1910, pp. 83–88.

[2] See this JOURNAL, vol. xxi (October 1910), pp. 15 ff., "The Idealism of Rudolph Eucken."

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up by several interesting expositions by English and American admirers. Above all, an international catastrophe, without parallel in the history of mankind, is actually in process; Eucken's philosophy of the spiritual life is brought face to face with this catastrophe, and he is forced to come to terms with the facts. The results appear in the last volume named above, not yet translated. The time has come for an estimate of a more definitely critical character; and the following paragraphs are offered as a tentative contribution to that end.[3]

It has been said that wherever you open Hegel you find him "saying the same thing." This is more true of Eucken than of any philosophical writer known to us. It is questionable whether his recent writings have added anything of consequence to the earlier books which made him famous, the *Lebensanschauungen der grossen Denker* and the *Geistige Strömungen der Gegenwart.* The essential message is always the same. The nineteenth century more than any other epoch brought with it an improvement of human conditions and an enlargement of the whole scope of life. One would have expected it to close with a powerful consciousness of satisfactory achievement. That it did not do so points to an error in the type of life which dominated the period. The error is one of fundamental omission or defect: a pervasive failure to grasp the need and the reality of a higher spiritual being which is at once the basis and the inspiration of life. Within ordinary human life a new depth of reality is discoverable, which cannot possibly belong to man as a merely natural being: a spiritual life which nature can give or take away as little as it can be reached or lost by theoretic investigation. The realization of this life is no mere extension, or even development, of any natural order; it opposes to the given order an altogether new life, a life which, in attaining spiritual immediacy, first discovers the true source and standard of all reality.

The vagueness besetting the summary statement, which we have just given, is also, it must be maintained, a prominent characteristic of the original writings themselves. An opaque atmosphere seems to brood over Eucken's work. This is due partly to the almost total absence of concrete illustrations and to the use of a peculiar terminology of elusive significance; but it springs ultimately from a more serious defect.

[3] An important critical estimate by Mr. Bernard Bosanquet, written from the Hegelian point of view, will be found in the *Quarterly Review*, No. 239 (April 1914), pp. 365 ff. (London: John Murray.)

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We fully admit that the reiteration, of which we have spoken, proves the unity and cohesion of the writer's thought; and the massive persistence with which he urges the need and the reality of a spiritual principle in life stamps it as an original philosophical achievement. The great interest shown in his work, especially among theologians, probably springs from the fact that his fundamental principle definitely excludes all forms of the Naturalism which is confidently preached, in some quarters, as the last word of science on human affairs.

The radical weakness in Eucken's philosophical position is laid bare when we require any real answer to the simple question, What is the *content* of the spiritual life? To answer this question is to trace the positive relation of the principle to the various aspects of that "world" or "nature" to which Eucken is ever setting it in opposition. The question is none the less urgent for Eucken because his conception of philosophy is akin to that of Fichte rather than to that of Hegel. Philosophy in Eucken is not, as in Hegel, purely theoretical; *i.e.*, its business is not only to understand *what is real* or is already accomplished, to "paint the grey in grey." Philosophy is practical; its conviction of the infinity of human nature and destiny involves a demand that all things shall be subdued to the higher life of man.[4] Eucken's fundamental principle is offered as an instrument for this end. How is the instrument to be used? How does the author himself use it?

We turn to his application of it in the history of thought. The *Problem of Human Life* now appears in an enlarged English version with a number of brief appendices contributed by the author. These do not appear to add anything to the value of the treatment. The book itself is not in any sense a history of philosophy. It is a historical treatment of the problem of the spiritual life; the thinkers selected for illustrating this problem, and the treatment of their doctrine, are determined entirely from Eucken's own point of view. The result is a book of much value and suggestiveness for many purposes. How far does it answer the question as to the content of the spiritual life? The only general conclusion emerging through the treatment is that the movement of conceptual thought depends on and is determined by the larger movement of life; hence adequate appreciation of

[4] Cp. Perry, *Present Philosophical Tendencies*, p. 164, and Boyce Gibson, *Quarterly Review, Ibid.*, p. 380.

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the great thinkers needs not only historical and critical scholarship but also something of the nature of sympathetic insight, penetrating to the central and the essential. "So Eucken goes up and down the history of philosophy," observes Mr. Lovejoy, "looking everywhere for recognitions or denials of the power and primacy of *the inner life.*" But the content of that life is not shown; only its essentially "inward" and self-sufficing character, and its independence of the merely "external," are emphasized. It is treated as though it were in itself the most fruitful of realities; but what is it?

In *Life's Basis* and *Life's Ideal* Eucken deals critically with five contemporary attitudes towards life, and argues that they fail to meet the essential human need. They are as follows: "Otherworldliness"; "Immanent Idealism," and "Intellectualism," incapable of dealing with the dark facts of sin and suffering; "Naturalism," vainly endeavoring to explain the spiritual from the non-spiritual; "Socialism," seeking to meet spiritual needs by material means, repressing originality, and reducing life to a dead level of the common-place; and "Aesthetic Individualism," which from every point of view is found to be merely superficial. The criticisms all touch real defects, and various elements of truth are recognized in these views of life. But the author does not show how these truths are to be taken up into the service of the spiritual life; the latter abides in its exaltation, purely negative in its attitude to everything concrete. In this reference, the more we study Eucken's writings the more we feel the justice of Mr. Bosanquet's verdict. We find "a certain hostility alternating with neglect towards the realm of nature below man, towards the beginnings of morals and religion in early society, towards the ethical import of institutions, and towards the greatness of Hellenism and the Middle Age. . . . Of the family, society, and the state, with their uniting mind and will and their inherent ethics and religion, we hear from Eucken hardly a word; and he has little serious study of art or religion as such."

In the volumes on Ethics and on Christianity there is little to relieve the severity of this criticism. In the former, after attacking the view of morals as based wholly on *social* relationships and needs, the author proceeds to discuss the conditions and possibilities of the "inner life" and the various means suggested for its development. Man cannot be satisfied with a mere place in "nature"; he has a sense of higher values than arise on the

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merely natural field. There must be an "inversion of life" in us, directly grappling with and opposing the natural world; we become conscious of a spiritual life both in ourselves, setting up "new" moral standards, and in the Life of All, which in its totality involves the spiritual being that we come to possess when we have energetically wrought it out. In this sense man must "die to live." The "spiritual life," therefore, is for Eucken the essence of Christianity; the traditional ecclesiastical and doctrinal forms of Christianity are to be rejected.

In the last volume on our list Eucken addresses himself directly to modern Germany. Now as a simple matter of fact it must be said that Germany, and particularly Germany since 1870, affords the most extensive exemplification of those defects in nineteenth century civilization on which Eucken has dwelt, in general terms, through hundreds of pages. In modern Germany the expansion of material resources, the immense development of applied science, the methodical and even mechanical organization of things, and of men, in the service of the *Kraftideal*, manifest themselves on a scale and with a thoroughness which have compelled the admiration of the world. But what has the philosophy of the spiritual life to say to these conspicuous phenomena of modern German *Kultur?* What has that philosophy—which spoke so loftily concerning the whole realm of human endeavor manifested in the natural order of life—to say, when thus faced in the concrete with the insistent problem of the sources of a nation's greatness? Certain evils, shared by German civilization with that of other nations, are spoken of, cautiously, in an abstract way; but *in the concrete* the philosophy of the spiritual life resolves itself into a glorification of German science, German industry, German thought, German strength. There is nothing abstract, no ambiguity or vagueness here; the verdict is clear and definite, and refers to the German virtues supposed to be manifested in the whole enterprise and conduct of the present war. And so the passage through Belgium, with all that it has involved, not only was "necessary" but is a manifestation of the spiritual greatness of Germany!

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THE GREEK PHILOSOPHERS. By A. W. Benn. Second edition. London: Smith, Elder & Co., 1914, Pp. xxxv, 619.

Mr. Benn is to be congratulated on having brought out a revised edition of his well-known book on the Greek philosophers. It is over thirty years since the appearance of the first edition. The study of Greek philosophy in Britain is in a very different position to-day from what it was then, and it says a great deal for the substantial excellence of Mr. Benn's work, that in producing a second edition after such a lapse of time, he has needed to make so few alterations. A good deal of the criticism to which the first edition of the work was subjected sprang from an unwillingness to take the book for what it professed to be. It does not pretend to be, strictly speaking, a history of Greek philosophy. Mr. Benn says that in his book he has regarded it as more important to "discover what each philosopher conceived to be the meaning of his predecessor rather than what that predecessor really meant." Now the author of a history of philosophy could not have written that: the historian of philosophy must endeavour primarily to discover what each thinker really meant. He is concerned only secondarily with the interpretations which succeeding thinkers placed on the doctrines of their predecessors. But if one is interested more particularly in the evolution of thought, as Mr. Benn is, it becomes of the first importance, in order to trace the affiliation of thinker to thinker, to discover what each philosopher conceived to be the meaning of his predecessors. Mr. Benn's point of view is, in fact, a very valuable one. It is suggested in the title of his work, which indicates his sympathy with the original Greek way of asking not, What is philosophy? but, What is the philosopher? The Greek treatment of the problems of philosophy is always concrete, and Mr. Benn has endeavoured with much success to restore the social and religious *milieu* in which the Greek philosophers did their thinking. His work is a study of the evolution of Greek thought, and every study of evolution should involve a study of environment. It is one of the book's chief merits that it never loses sight of this important fact.

It is impossible to discuss anything like all the points raised in this book. One of the most interesting of the new passages gives a novel explanation of the origin of the atomic theory. Mr. Benn points out that Aristotle observes in the first book of the *Metaphysics* that among those who assign a material cause to the

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universe some have chosen water, some fire, and some air as the first principle of things; while not one has pronounced in favour of the remaining element, i. e. earth. Mr. Benn suggests that atomism began by taking earth as its primary element, and gives several reasons why it may have seemed natural to the atomists to regard earth as the elementary principle. One difficulty in accepting Mr. Benn's theory is that we have no evidence for it, whereas there is evidence for the explanation that Aristotle gives. One feels that if there had really been any ground for Mr. Benn's suggestion, Aristotle, who seems to have known a good deal about atomism, would have stated it, especially as it would have brought the atomists so neatly into his *schema* in the *Metaphysics*. Again, Mr. Benn's theory means that Leucippus returned to the level of the early Milesian school—a very retrograde step, with which it is difficult to credit a man of Leucippus's acumen. And it is all the harder to believe this, if, as seems probable, Theophrastus is right in his statements that Leucippus had been a member of the school of Parmenides, and had "heard" Zeno. On the other hand, one might argue for Mr. Benn's view on the ground that Leucippus was probably himself a native of Miletus, and therefore may have had some sympathy, at the beginning of his thinking, with the Milesian standpoint.

The chapter on Nature and Law is one of the most valuable in the book. Mr. Benn's view of the Sophists was recognised, when the first edition was published, as one of the most original things in his work; and it is unfortunate that his theory has not been more generally accepted. According to this view, the *φύσις-νόμος* controversy divided the Sophists into two camps, one represented by Prodicus and Hippias, the other by Protagoras and Gorgias. Prodicus and Hippias took the side of Nature, the others that of Law or Convention. Mr. Benn makes the interesting suggestion that Hippias's sympathy with Nature may be exemplified by his versatility, and aptly illustrates it by the respect for versatility of the eighteenth century return-to-nature thinkers. In the same chapter there is a brilliant characterisation of Aeschylus and Sophocles, as representing respectively the naturalistic and humanistic tendencies of Greek thought. Mention should also be made of the note in which Mr. Benn gives a conjectural reconstruction of the cosmology of Prodicus. That Prodicus had a cosmology is implied in the *Birds* of Aristophanes, and Mr. Benn skilfully tries to restore it from passages in the fragments of Euripides.

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Mr. Benn reprints the original chapter on Socrates, merely adding a note in criticism of some recent work. The chapter on the metaphysics of Plato is in great part new, but Mr. Benn's general point of view remains the same. Mr. Benn's views on Socrates and Plato do not commend themselves to everybody; but he has the courage of his convictions and believes that they can be defended against all criticism. Very valuable is the scholarly note on the idea of Nature in Plato. It emphasises the fact, often overlooked, that Plato did have an interest in the physical aspect of the world, and also that the doctrine of φύσις has a close connection with Plato's general conception of reality. The value of the note might have been enhanced if the relation of the theory of nature to the doctrine of forms had been brought out.

In the remaining chapters of the book, Mr. Benn deals with Aristotle, the Stoics, Epicurus and Lucretius, the Sceptics and Eclectics, and Plotinus. These chapters have been reprinted with hardly any change, and it is unnecessary to say anything of them except that they display specially clearly the merits of the book. On the whole, Mr. Benn has been very successful in realising his ambitious aim, "To exhibit the principal ideas of Greek philosophy in the closest possible connection with the characters of their authors, with each other, with the parallel tendencies of literature and art, with the history of religion, of physical science, and of civilisation as a whole."

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WILLIAM JAMES AND HENRI BERGSON. By Horace Meyer Kallen, Ph.D. Chicago: The University of Chicago Press, 1914. Pp. xi, 248. $1.50.

This brilliantly written little volume is a timely and able discussion of some questions that have needed sifting ever since James' rhapsodic introduction of Bergson to English readers. By many, even among the initiated, that famous introduction has been taken for much more than it was worth as an index of the agreement between James and Bergson. It is well, therefore, to have these matters set out by one in every way so well qualified for the enterprise as the author. It is also fortunate that the presentation of two such masters of expression as James

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and Bergson does not subject the reader to painful contrasts between the style of the treatment and that of the material treated.

The basis for the entire discussion of the relation of James and Bergson to each other is found in their relation to what Dr. Kallen calls the "philosophical tradition," or better the "metaphysical tradition" in philosophy. In its most general character this tradition has expressed itself in the "compensatory" conception of the world. My recollection is that this term is of Dr. Kallen's own mintage. By it he means that metaphysics has consisted in the main of "a substitution of desiderates for data, of ideals for facts." It has been essentially "a vicarious fulfillment of unsatisfied desire, a compensation in discussion for a disappointment in reality." In method the metaphysic tradition is marked by "the hypostasis of the instrument." "Philosophy has fallen into the position of the toper whose first drink is taken to save his life and who ever after lives to drink."

In computing the latitude and longitude of James and Bergson in relation to this "metaphysical tradition" the author is led to canvass the relation of idealism and radical empiricism, neo-realism and pragmatism to this conception. The author's verdict in the end is that all have sinned and come short of the glory of the God of things as they are; but that James, pragmatism, and radical empiricism—one gathers that the last is thedesignatory legend preferred by the author—have at all events accepted in principle the world at its "face value" and have in fact been fairly successful in so taking it. Traditional idealism is, of course, *durch und durch* compensatory. Neo-realism has tried to be radically empirical. "But by using formal logic and external relations as a measure of existence it has secured an unchallenged place among the protagonists of the compensatory tradition." Even some pragmatists, *e.g.*, Papini, have not escaped "hypostasizing the instrument." As for Bergson, he is a prince of the compensatorists albeit he finds his compensatory reality in change instead of in eternal visions.

It is in the exposition of the agreement and disagreement, especially of the disagreement, between James and Bergson that the volume makes perhaps its most valuable contribution to current discussion. As before remarked, James' fervid introduction of Bergson misled many. Even in their anti-intellectualism, which is the one thing most readers would say James and

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Bergson have in common, Dr. Kallen points out a fundamental difference. Bergson teaches that intellection is essentially mutilative. James says it is so *only* when the results of its operation are hypostasized into metaphysical entities. "For James, falsification belongs to metaphysics; for Bergson, to the realm of cognition as such."

But after all the real basis of philosophic difference between men is to be found not so much in doctrines of method as in beliefs about such matters as "the origin and destiny of man," the nature and meaning of goodness and divinity. And here the chasm between James and Bergson yawns wider than ever. For Bergson, goodness and immortality are metaphysical implications; for James, the one must be created, the other discovered or perhaps also achieved if so be.

As an avowedly sympathetic reader of this volume I find in my notes the following questions on some points of doctrine:

First, is there danger of pushing too far the opposition between man and the world? (pp. 2, 207). While there is opposition, is there not also co-operation?

Second, must not radical empiricists be careful to keep mediation and stability, that is, whatever mediation and stability is found or effected, on a level with the immediacy and the flux of experience? (p. 27 *et passim.*)

Third, I have not been able to see the internal coherence in Bergson's system—for paradoxical enough it is a system—which Dr. Kallen finds (pp. 112, 210 ff.). I have pointed out elsewhere (*Phil. Rev.*, 21, No. 4) that Bergson's attempt to expound an evolutional philosophy with a nonevolutional logic produces a series of antinomies in which every important category plays opposite and from Bergson's standpoint contradictory rôles.

All in all the verdict must be that Dr. Kallen has done well something well worth doing.

A. W. Moore.

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Religio Doctoris: Meditations upon Life and Thought. By A Retired College President. With an introduction by G. Stanley Hall. Boston: Richard Badger, 1913. Pp. vii, 183.

A "human document" is seldom merely interesting, it is usually coercive in its attraction. This is exemplified in the general preference for autobiography to biography, when the former is

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really sincere. The cause of this may be found, perhaps, in the essential attributes of the human relations.

Religio Doctoris is a human document in that it was written as a final message of a dying man to his fellows. In such a case we expect an unburdening of the heart. The author attempts in four essays, "to express the fundamental convictions that have made my life a predominantly happy one"—"and which leave me now happy in the contemplation of death." It is implied that the value of the essays will be brought out in the consideration that the author's life was happy in spite of physical weakness; and the contemplation of death was no less happy, although he does not believe in immortality, or in a Ruler of the Universe, who loves us as his children.

The underlying thought of the essays may be taken to be this. In order to be happy and good one must be acquainted with the world and one's own relation to it. Philosophy is the concern of every man, for it will give him knowledge of the world, it will unite for him the fragments of the scientific specialist, and provide the viewpoint for a correct way of thinking. Philosophy which is necessary for the understanding of experience as a whole, makes for the destruction of false ideals, and induces one to look upon the world as a reality—a reality upon which as a basis true ideals may be built. It is impossible to live happily or morally when one considers this world as a mere makeshift in which to prepare for removal to the next world, which is presumed to be the only real one. The two-world notion is a false tradition handed down from a more primitive civilization. It has its basis in ideas of disjointed experience, in doctrines that hold our experience to be not truly continuous, and our world an unreal one. In the essay on the nature of explanation the author proceeds to show that our experience is a unitary whole, that one part is related to every other part. The problem of evil illustrates this very point. We have been unsuccessful in dealing with this phenomenon because we did not give it its proper place in experience. We did not think it depended at all upon us, but it does, and knowing that it does, we can overcome it. Evil is the result of man's incapacity, his inability to cope with nature. It is the result of an incomplete adjustment of man to the natural conditions of life, revealing a cleft in the wholeness of experience.

All the problems of morality are directly related to this capac-

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ity of knowing the world and experience. With this knowledge comes the proper understanding of morality and its relation to happiness. To know that one is a member of a social group, and part of a larger homogeneous whole, is basis enough to teach that there can not be absolute sacrifice of either the part for the whole, or the whole for the part. In proportion as one recognizes this, will it be evident that the egoist is not the antithesis of the moral person; providing that he is guided by intelligence, which makes for sympathy in dealing with the whole. On the other hand he will know that to sacrifice one's self means *ipso facto* to injure the whole of which he is a part. The truly moral individual and the highest type is one whose conduct is instinctively directed toward the good of all among whom he is included. Happiness and morality are joined in harmonious relation, because they are real parts of a real world.

As these essays are addressed to the every-day man, one is not inclined to discuss them from the standpoint of theory. It is only fair to say, however, that they are sound in their reasoning, and delightfully written. They should enjoy a large circulation among every-day men.

J. KANTOR.

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SHORTER NOTICES

WELFARE AS AN ECONOMIC QUANTITY. By G. P. Watkins. New York: Houghton Mifflin Co., 1915. Pp. xxv, 191.

Amid all of man's inhumanity to man there are unmistakable signs that in any specific society the attitudes with which men regard each other are becoming better. The truth of this finds abundant verification in the transformation that is taking place in the concepts of the social sciences. The literature devoted to the discussion of social and legal philosophy indicates clearly that a broader and more humane outlook stimulates the workers in these fields. The students of the law are pleading for a reinterpretation of the meaning and function of legal institutions. The progressive economists are introducing such modifications in their particular discipline as to modify materially its fundamental principles. All this may be looked upon as symptomatic of the readjustment of some phases of social relations.

This volume may be considered in some measure as an illustration of the better temper of economic literature. This volume is an essay on the consumption aspect of economics, and stresses the human interests involved. Technically it is devoted to the theoretical consideration of utility. The author defines economics as the study of the means of welfare (p. 1), and the means of welfare are things and processes having utility. This utility is looked upon as a function of the social life, since practically all useful

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things must be socially considered. There is a distinction drawn in the study of utility between the concretely conceived good, and the concretely conceived individual. The author stresses the former, an action justified by the fact that this is a study of welfare as an economic quantity, rather than welfare as an ethical quality. There is, to be sure, no insistence upon the disparity between the two, yet the varying attitudes are rightly distinguished. Of especial interest to the ethicist are the later chapters in the book devoted to the discussion of Adventitious Utility. Here are brought sharply to light the moral problems involved in the consumption of utilities in vain and ostentatious display. In regard to the adventitious utilities the author is clear that the factors involved are something more than merely economic in the old sense of that word. They involve certainly some consideration of the good and proper.

In the chapter on practical applications which closes the volume, the author comes to the conclusion "that the means of bare existence are of no utility or of contingent utility only; that moderate incomes are good in themselves and for society; and great incomes, especially great inherited incomes, mean principally a waste of utilities." As an example of the newer attitude in economics this volume merits the attention of those interested in the socializing processes that are gradually penetrating the "social sciences."

BIOLOGY AND SOCIAL PROBLEMS. By George Howard Parker. Boston and New York: The Houghton Mifflin Co., 1914. Pp. x, 130. $1.10.

The type of work represented by this volume is invaluable for the student of practical ethics. It serves as an introduction to some of the biological problems that are basic for those who hope to accomplish something in the field of social improvement. Professor Parker has presented here in excellent style some intensely interesting materials which are immediately applicable to social problems. The volume comprises four lectures on the nervous system, hormones, reproduction, and evolution. In each of the chapters are clearly discernible the applications that may be made of the knowledge that the biologists obtain. For example, the problem of heredity which is a very important one for the sociologist finds here many instructive suggestions. When the biologists are prepared to say just what are the influences that bring about certain effects in the personal equipment of an individual much of the perplexity of the eugenist will be dissipated.

Professor Parker points out what the biologist has already accomplished in this direction. The volume is a creditable contribution to the literature undertaking to indicate what the scientists are discovering concerning the nature of man.

J. KANTOR.

THE PRINCIPLE OF INDIVIDUALITY IN THE PHILOSOPHY OF THOMAS HILL GREEN. By Harvey Gates Townsend. New York: Longmans, Green & Co., 1914. Pp. vii, 91. $0.75.

The writer of this monograph has succeeded in producing a lucid account, in a limited compass, of the principal points in the philosophy of Thomas Hill Green. The problem of Green this author takes to be that of showing what is the truth regarding the individual. The philosophy of Green has met with much criticism: "On the one hand, the objection is raised that his philosophy allows no room for change; and on the other hand, that the process is interminable." Mr. Townsend believes these criticisms cancel

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each other. While rigidly avoiding discussion of the ethical or social implications of Green's philosophy this work is not without interest for the student of ethics, since there is a close connection for Green between ethics and metaphysics.

J. KANTOR.

A HISTORICAL INTRODUCTION TO ETHICS. By Thomas Verner Moore. New York, American Book Co., 1915. Pp. xii, 164.

This little handbook, designed for Catholic students, presents the ethical systems not in chronological order but logically and in relation to the system of Saint Thomas Aquinas whose positions are adopted and whose work is presented with greater fulness than any other and as the climax of the discussion. Ethical systems are divided into two classes, "conditionate" and "absolute," the former comprising the various forms of hedonism and utilitarianism and the latter all the rest. Systems of absolute morality are divided into five groups, according as the organ of knowledge is the moral sense, sympathy, instinct, intuition, or reason. Under this latter class are treated the work of Kant, Socrates, Plato, Aristotle, and Saint Thomas. The position of Saint Thomas that there is a difference between the virtues and the gifts of the Holy Spirit is adopted and ethics is absorbed in religion. The discussions of the individual authors are necessarily very brief and fragmentary but the statements are very clear and very fair. The last paragraph is in the form of a prayer to deity. The book is frankly hortatory.

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